

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 UNITED STATES OF AMERICA 4:10-CR-00459-1

5 VS. HOUSTON, TEXAS

6
7 WILMAR RENE DURAN-GOMEZ MARCH 23, 2022

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10 TRANSCRIPT OF MOTION TO SUPPRESS PROCEEDINGS
11 HEARD BEFORE THE HONORABLE KENNETH M. HOYT
12 UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Please be seated.

3 All right. Let me call the case and then there
4 are a couple of housekeeping matters that we need to address
09:12AM 5 and then I think we'll be ready to get started.

6 This is Cause Number 2010-459, the United States
7 of America versus Wilmar Rene Duran-Gomez.

8 Present here in the courtroom for the government
9 are?

09:12AM 10 MS. COLLINS: Lisa Collins for the United States joined
11 by Jill Stotts and Barry Disney.

12 THE COURT: All right. And who will be handling the
13 witnesses this morning?

14 MS. COLLINS: I will, Your Honor.

09:12AM 15 THE COURT: All right. Thank you.

16 Let's see. And will there be a need, at least at
17 this point in your thinking, for anyone else to participate in
18 the discussion?

19 MS. COLLINS: From the United States, no, Your Honor.

09:12AM 20 THE COURT: All right. And I say that because I
21 believe that all of the questioning and proceedings need to
22 happen from the podium and I think the podium -- let me see.
23 I'm in a different courtroom so, let's see, where is the
24 podium?

09:13AM 25 MS. COLLINS: Right there.

1 THE COURT: That's the podium. Very good.

2 So that's all I needed. Thank you, Ms. Collins.

3 And representing the defendant, Mr. Duran-Gomez?

4 MR. DAVIS: Good morning Your Honor. Neal Davis, III,
09:13AM 5 joined with Wendell Odom and Julie Stelzig.

6 And we also have Madeleine Stuzin, S-T-U-Z-I-N,
7 who is an intern; and this is the first time she's been in a
8 courtroom to see a proceeding, Judge.

9 THE COURT: Did you say Madeleine?

09:13AM 10 MR. DAVIS: We call her "Maddie."

11 THE COURT: Is it M-A-D-L-Y-N?

12 MS. STUZIN: M-A-D-E-L-E-I-N-E.

13 THE COURT: All right. Very good. All right. Thank
14 you.

09:13AM 15 MR. DAVIS: And Jim Wyda will be at FDC if FDC does
16 call in.

17 THE COURT: I think that we are attempting to -- with
18 the storm this morning, we may be having some difficulty
19 getting that in, but I believe I heard from Mr. Wyda just at
09:14AM 20 that point, perhaps speaking through the -- at least speaking
21 through the system letting us know that he is present.

22 Is that you, Mr. Wyda; or was that the
23 interpreter?

24 (No response.)

09:14AM 25 THE COURT: All right. Are you able to hear me? I'm

1 speaking now to the interpreter. I can see the interpreter on
2 the line. Are you able to hear me?

3 INTERPRETER DEL VILLAR: Yes, Your Honor. I can hear
4 you, but we will need to establish the telephone call with, I
09:14AM 5 guess, Mr. Wyda or whoever has the phone there with the
6 defendant so that we can begin the simultaneous interpretation.

7 THE COURT: You're not able --

8 INTERPRETER DEL VILLAR: It may take a few minutes.

9 THE COURT: You're not able to connect with him at this
09:14AM 10 point?

11 INTERPRETER DEL VILLAR: I don't see him on the video.
12 But, I mean, I just need the phone number to call.

13 THE COURT: I have no idea what the phone number is.

14 INTERPRETER DEL VILLAR: I can't hear him on the video.
09:15AM 15 If I could get that phone number.

16 THE COURTROOM MANAGER: Mr. Wyda does not have his
17 phone on his person because of the --

18 INTERPRETER DEL VILLAR: I have a phone number that he
19 can call if that's necessary.

09:15AM 20 THE COURT: Well, he doesn't have a phone, but they
21 should have a phone at that location.

22 So what is that phone number, Cynthia? Do you
23 know?

24 THE COURTROOM MANAGER: No, Your Honor.

09:15AM 25 THE COURT: All right. So he should get that --

1 MS. STELZIG: I apologize. Do we need a number for
2 Mr. Wyda or for the facility?

3 THE COURT: I'm sorry. Who is speaking?

4 MS. STELZIG: I am so sorry, Your Honor. Julie Stelzig
09:15AM 5 from the Public Defender's Office.

6 THE COURT: Go ahead. I'm sorry. I just wanted to
7 make sure the court reporter --

8 MS. STELZIG: Of course. I apologize. I do have a
9 number for the facility and a number for Mr. Wyda.

09:15AM 10 THE COURT: Well, then you need to call the facility
11 probably because they probably took Mr. Wyda's phone when he
12 went in.

13 MS. STELZIG: I do expect that's what's happened.
14 Your Honor, I did try to reach Mr. Durrett, the attorney for
09:16AM 15 FDC, and I was not able to reach him, but I sent him an e-mail
16 and haven't heard back so I'm not sure. They may be having
17 trouble connecting.

18 INTERPRETER DEL VILLAR: Okay. There they are.

19 THE COURT: I believe we have visual on the room and an
09:16AM 20 officer in the room. That looks like a man in a suit, probably
21 not one of the prisoners there or detainees. That's probably
22 Mr. Wyda.

23 So let's see if we got that in place. Okay.

24 (Off-the-record discussion.)

09:20AM 25 THE COURT: Well, I think you just need to be aware

1 that these mikes are hot and if he wants to talk to his client,
2 he needs to either move away from them or speak into his ear
3 rather than -- and I'm not sure if Mr. Wyda speaks Spanish or
4 not, but I'm sure Mr. Duran-Gomez speaks enough English to at
5 least understand his attorney.

09:20AM

6 INTERPRETER DEL VILLAR: And then if we could just make
7 sure to keep the noise down from the FDC. I think we're ready
8 to begin.

9 THE COURT: Exactly. And the same would apply here,
10 gentlemen and ladies, if you please do not rattle papers on
11 your desk nor at the microphone so that we might be able to
12 hear or at least get the transmission through.

09:20AM

13 I believe the storm has passed, but it doesn't
14 mean that we are out of the zone of challenge in the
15 stratosphere or wherever this thing blew through so I
16 appreciate that very much.

09:21AM

17 Mr. Wyda, can you hear me, sir?

18 MR. WYDA: Yes, Your Honor.

19 THE COURT: Thank you very much. And you hear the
20 interpreters, correct?

09:21AM

21 MR. WYDA: Yes, Your Honor.

22 THE COURT: Very good. This is the best of all worlds
23 with an attorney on the location it seems to me.

24 Now, having said that, let me say to counsel
25 this is not going to take all day to do. I'm going to give

09:21AM

1 each of you one hour to present the evidence as it relates to
2 each witness. If it's going to take more than that, then
3 you're trying the case and I really don't have the time to do
4 that today and I will not be here tomorrow. So anything that
09:21AM 5 you might think you need to do regarding two witnesses, I
6 believe -- is that right, Ms. Collins?

7 MS. COLLINS: That's correct.

8 THE COURT: Beyond the two witnesses, if there's
9 anything else you think you need to do, you will need to do it
09:21AM 10 on Thursday and we can fix a time for that.

11 I will not take closing arguments from you. I
12 will not take opening arguments from you. I'm as familiar with
13 this case as I can be over these years.

14 And of course the most important thing are the
09:22AM 15 writings that you have provided to me. You've done a good job
16 of presenting the issues and defining the areas and the
17 question remains what are the facts and so the facts will
18 dictate it seems to me and you've stated those in my judgment
19 fairly accurately or at least openly and completely in your
09:22AM 20 papers.

21 Another item I need to point out to counsel,
22 particularly for the defense, and that is that when a motion is
23 filed and the government responds, in my judgment if I
24 determine that a reply is unnecessary, I will not wait two
09:22AM 25 weeks for a reply. I will respond to that motion.

1 A time frame must be pushed together. We cannot
2 spend week on week on week and these things get lost in my
3 paperwork when I have 80 or 90 defendants in one case that I
4 need to deal with on sentencings and I have three to five
09:23AM 5 international criminal cases that might be going on trial and I
6 have other major litigations going on and certainly we are at a
7 crunch time to some extent in our courts when we are trying now
8 to get back on speed and lawyers are doing as well in their
9 offices so there's too much paper to read for me to wait on
09:23AM 10 replies.

11 If I'm ruling in your favor, you certainly should
12 not be complaining about not having had an opportunity to file
13 a reply. If I'm going to rule against you, I hope to do it
14 sufficiently so that if, for example, I do not wait on the
09:23AM 15 reply, you will at least have sufficient basis to say
16 "reconsider" and we can move in that direction.

17 All right. As I understand it, we have two
18 witnesses that will be called. Is there any other witness or
19 witnesses that are going to be testifying from the government's
09:24AM 20 perspective beyond what you've already revealed?

21 MS. COLLINS: No, Your Honor.

22 THE COURT: And I gather the defense will not be
23 presenting witnesses, correct?

24 MR. DAVIS: That's correct, Your Honor.

09:24AM 25 THE COURT: All right. And so here is the order of

1 proceeding. I hope you brought your lunch. I have a 2:00
2 proceeding this afternoon that requires the full court
3 proceeding together and so you might have a 30-minute lunch. I
4 hope that if you don't have it, you will send someone to get
09:24AM 5 it. You will have a short period of time if we are pushed to
6 get this done. I don't know whether we will or not.

7 Who are the witnesses in this case?

8 MS. COLLINS: Ross Neal and Ray Lamb, Your Honor.

9 THE COURT: Are they both in the courtroom?

09:24AM 10 MS. COLLINS: They're sitting right outside,
11 Your Honor.

12 THE COURT: Would you have them come in, please?

13 MR. DAVIS: Your Honor, if I may, just briefly just for
14 the record, just really two things.

09:24AM 15 One, I just wanted the Court to know -- and I'm
16 sure the Court is aware --- but we wanted to make sure it was
17 on the record that we did have a waiver of the defendant's
18 right for the presence -- for his presence in the motions
19 hearing.

09:25AM 20 We discussed with Mr. Duran-Gomez that there's a
21 possibility that the video may go out. He understands that.
22 We wanted to proceed with this as quickly as possible and
23 continue to proceed even if the video went out.

24 And then Number 2, Your Honor, what the defense
09:25AM 25 is planning on doing is I will be handling both witnesses,

1 Agent Neal and Agent Lamb. However, would the Court
2 entertain -- we had some argument after the motions hearing.

3 THE COURT: I'm good. I think I'm where you are; and
4 I'm where you are, Ms. Collins. I think if I need argument, we
09:25AM 5 can do it on Thursday, but I'll make that determination after I
6 hear the evidence. There is some areas in the evidence where
7 some questions might need to be asked, but those will be my
8 questions.

9 MR. DAVIS: Sure. And if that were to happen, Judge,
09:26AM 10 Ms. Stelzig would be more than happy to help the Court in any
11 way the Court sees fit.

12 THE COURT: Sure thing. I would like to do this in one
13 setting because of the circumstances where Mr. Duran-Gomez is
14 locked in now. I would like to get this done with his presence
09:26AM 15 and if there's some argument to be made on paper or in-person,
16 on paper doesn't create a problem, but in-person does create
17 another problem.

18 All right. Gentlemen, if you would please step
19 forward, come to the railing there, if you would, and raise
09:26AM 20 your right hand.

21 Mr. Ray Lamb?

22 MR. LAMB: Yes, Your Honor.

23 THE COURT: What about Mr. Ross Neal?

24 MR. NEAL: Yes, sir.

09:26AM 25 THE COURT: Okay. Gentlemen, I'm going to swear you

1 in. You are witnesses who have been called to give testimony
2 in this case. So would you raise your right hand at this time
3 and take an oath?

4 (The oath was administered.)

09:27AM 5 THE COURT: Thank you very much.

6 Who is your first witness, Ms. Collins?

7 MS. COLLINS: Ross Neal, Your Honor.

8 THE COURT: All right.

9 Yes, sir?

09:27AM 10 MR. DAVIS: May we invoke the rule, Your Honor?

11 THE COURT: The rule has been invoked, Mr. Lamb. That
12 means that you will sit outside the hearing of the testimony in
13 the case. You will not talk to Mr. Neal about his testimony;
14 and, of course, if there is someone who can talk to Mr. Neal,
09:27AM 15 it would be the attorneys by either side who might have some
16 concerns or questions.

17 And, of course, the lawyers are admonished not to
18 advise Mr. Lamb of any testimony that's been given here in the
19 courtroom.

09:27AM 20 So if you would step out, please, sir. Thank you
21 very much. I suspect that if you haven't had coffee, you've
22 probably got enough time to get some.

23 MR. LAMB: Thank you.

24 THE COURT: Sir, come forward. And I think the podium
09:27AM 25 is the place where you can be seen and heard. I believe the

1 witness stand is over on my left. Please take the witness
2 stand and we will be getting started.

3 Adjust the microphone there. The seat slides
4 forward. Yes. Good deal. Just bend it. It will bend down.
09:28AM 5 All right. You've got it. Test it there.

6 How are you doing?

7 THE WITNESS: I'm doing well. Thank you, Your Honor.

8 THE COURT: Great. We're good.

9 Ms. Collins.

10 MS. COLLINS: Yes, Your Honor.

11 **ROSS NEAL,**

12 having been previously duly sworn, testified as follows, to
13 wit:

14 **DIRECT EXAMINATION**

09:28AM 15 **BY MS. COLLINS:**

16 Q. Could you please state your name for the record.

17 A. Yes. My name is Ross Neal, R-O-S-S N-E-A-L.

18 Q. What do you do for a living?

19 A. I'm a criminal investigator, special agent.

09:28AM 20 Q. With what agency?

21 A. I work for the U.S. Department of Homeland Security,
22 Immigration and Customs Enforcement; and at the current time,
23 I'm assigned at the Office of Professional Responsibility.

24 Q. All right. How many years have you been with the

09:29AM 25 Department of Homeland Security?

1 A. With the Department of Homeland Security or its legacy
2 agencies, for 25 years since 1996.

3 Q. All right. During the period of your time, 25 years,
4 would it be fair to say that you've had numerous encounters
09:29AM 5 with undocumented persons?

6 A. Yes. That's correct. Numerous.

7 Q. Ballpark figure. Hundreds, thousands?

8 A. Thousands.

9 Q. All right. I want to turn back to November of 2006.

09:29AM 10 Where were you assigned at that time?

11 A. At that time I was assigned to Homeland Security
12 Investigations in Houston, Texas.

13 Q. All right. And have you been in Houston your entire time
14 with the department?

09:29AM 15 A. I have not. I started in 1996 in Southern California
16 between San Diego and Los Angeles.

17 I moved to West Texas about 90 miles east of El Paso. I
18 moved to South Texas near Brownsville. That was all with the
19 Border Patrol.

09:30AM 20 And then in 2002, I became an investigator in Houston
21 where I worked until 2011. I transferred to Beaumont, Texas,
22 as an investigator.

23 And then in 2021, now I'm with my current assignment with
24 the Office of Professional Responsibility in Houston again.

09:30AM 25 Q. All right. Kind of walk us through in November of 2006,

1 kind of your day-to-day responsibilities or activities with
2 your assignment.

3 A. So in 2006, I was a field agent in Houston. At the time I
4 was assigned to the immigration and document and benefit fraud
09:30AM 5 investigations unit. So on the daily, I would investigate
6 crimes that involved benefit or document fraud, visa fraud,
7 identity theft, that kind of thing.

8 Q. All right. As a part of your assignments at that time,
9 was it common for you to make use of confidential informants?

09:31AM 10 A. Yes, it was.

11 Q. All right. And during that period of time --

12 INTERPRETER DEL VILLAR: The interpreter speaks.

13 I'm sorry, Your Honor. I'm getting an awful lot
14 of noise from the FDC, and it's making it very difficult to
09:31AM 15 understand.

16 THE COURT: Would you tell whoever it is to stop it.

17 INTERPRETER DEL VILLAR: If we could please keep the
18 noise down, there's some clicking or some shuffling or
19 something that's making it very difficult to hear.

09:31AM 20 THE COURT: Mr. Wyda, make sure there's nothing going
21 on in that room with any of the pencils and papers and things
22 of that sort.

23 I appreciate it. Thank you.

24 MR. WYDA: Thank you, Your Honor. Will do.

09:31AM 25 THE COURT: Thank you, sir.

1 MS. COLLINS: May I proceed, Your Honor?

2 THE COURT: You may.

3 **BY MS. COLLINS:**

4 Q. All right. On November 20th of 2006, did you receive a
5 call from a confidential informant?

6 A. I did.

7 Q. Where were you at that time?

8 A. I was out to dinner with my family in Kingwood, Texas.

9 Q. All right. Was it common for you to get calls kind of at
10 all hours of the day and night from confidential informants?

11 A. Yes, all times of day or night.

12 Q. All right. With regards to this specific confidential
13 informant, was this someone that you had used prior to
14 November 20th of 2006?

15 A. Yes, it was.

16 Q. And can you give us kind of a time frame of how long you
17 had been working with this particular CI?

18 A. It's been many years, but I believe since 2005.

19 Q. All right. So give or take a year. Would that be fair?

20 A. Probably a year or year and a half. Somewhere in there.

21 Q. All right. Throughout the time that you had made use of
22 this CI, had you received information that you had been able to
23 corroborate from him or her?

24 A. Yes, I had conducted a successful investigation with the
25 confidential informant. I believe there were two or three

1 indictments and convictions.

2 Q. All right. Because of that, did you believe that his or
3 her information had been proven credible in your experience?

4 A. Yes.

09:33AM

5 Q. All right. Based on that, when you received a call from
6 him or her on the evening of November 20, 2006, did you take
7 that call?

8 A. Yes, I took the call at the table in the restaurant.

09:33AM

9 Q. Now, based on the fact that you were there with family at
10 dinner, was this a long call or a fairly short call?

11 A. It was a short call.

12 Q. Can you give us an idea of the basics of what the CI told
13 you at that time?

09:33AM

14 A. Yes. The source answered -- I answered the call and the
15 source said, "Did you see on the news where there were two
16 Hispanic people that had been beaten and killed and found in a
17 stolen vehicle?"

18 Q. Okay. Let me stop you there. Had you seen that?

19 A. Yes, I had seen that.

09:34AM

20 Q. And when you had seen that report on the news, had it
21 caught your attention?

22 A. Yes, it caught my attention. I thought -- right from the
23 get-go, I thought, well, this is likely involved in alien
24 smuggling or narcotic smuggling.

09:34AM

25 Q. What was your basis for that?

1 A. Stolen vehicle, people beaten to death and concealed in
2 the vehicle, it was just the first thing that jumped out at me.

3 Q. All right. And did you tell him or her that, that you had
4 seen that?

09:34AM 5 A. Yes. I said, "I did see that."

6 Q. What was their response?

7 A. The source said, "I know who did it."

8 Q. All right. At that point, did you have any further
9 conversation on the phone?

09:35AM 10 A. No, not that I remember. I terminated the call pretty
11 quickly after that.

12 Q. All right. What was the reason for that?

13 A. I was in a public restaurant with my family. I didn't
14 want to -- I didn't want to continue that conversation there.

09:35AM 15 Q. All right. After you made it out of the restaurant and
16 were able to drop your family off, did you reinitiate
17 conversation with that source?

18 A. Eventually I did, but I think before I did that, I reached
19 out to a colleague to see if one of my coworkers could meet.

09:35AM 20 Q. All right. Based on your training, would it be fair to
21 say that you would normally meet a source with someone else
22 present, in other words, not by yourself?

23 A. Correct. We're prohibited from meeting sources alone.

24 Q. All right. And was your colleague able to meet you?

09:35AM 25 A. Yes.

1 Q. And what was his name again?

2 A. Ray Lamb.

3 Q. All right. What did the two of you do together?

4 A. We initially met and we discussed the call and we kind of
09:36AM 5 came up with a game plan. Our initial plan was that we were
6 going to make contact with the source and try to meet the
7 source in person.

8 Q. All right. And were you able to do that?

9 A. Yes, we were.

09:36AM 10 Q. Can you give us a ballpark on about how long it was
11 between the initial call and when you were able to actually
12 meet the source?

13 A. It was a long time ago. I'm going to say it was in the
14 neighborhood of two hours.

09:36AM 15 Q. All right. And how did you meet the source? Rather,
16 where did you meet the source?

17 A. We met the source in person. I believe it was at the
18 source's residence, but asked the source to come out and get in
19 the vehicle with us.

09:36AM 20 Q. All right. And is that where you were able to get a bit
21 more information from him or her about what they knew?

22 A. Yes. That's correct. We talked at length after that.

23 Q. And what was the source able to tell you about these
24 homicides?

09:37AM 25 A. The source identified the person that they believed to be

1 responsible. They said it was Wilmar Duran. They said that he
2 smuggled aliens, that he had a business where they used vans
3 that they would move -- they would move illegal aliens from
4 Houston throughout the country and also that Mr. Duran had a
09:37AM 5 warehouse where he would keep these people prior to them being
6 moved.

7 So they would come from the southwest border area, they
8 would go into the warehouse. Once their fees and family
9 members were contacted, they would either be released or they
09:37AM 10 would be put on a van and sent somewhere else in the country.

11 Q. All right. Let me pause you there.

12 In your experience over the last 25 years, was the
13 smuggling of illegal or undocumented persons a trade that you
14 were familiar with?

09:38AM 15 A. Yes, very, since the inception of my career.

16 Q. In the information that the source was giving you, did
17 this all make sense from your experience with how people would
18 be smuggled?

19 A. Yes, perfect sense. It was very common for Houston at the
20 time.

21 Q. All right.

22 INTERPRETER DEL VILLAR: The interpreter speaks. I'm
23 sorry to interrupt, Your Honor.

24 I'm also having a little bit of trouble hearing
09:38AM 25 the witness. If I could get the witness to approach the

1 microphone or just speak up a little.

2 THE COURT: We got it.

3 INTERPRETER DEL VILLAR: Thank you, Your Honor.

4 BY MS. COLLINS:

09:38AM

5 Q. Originally the conversation had been about homicides. Was
6 the source able to give you more information about the
7 homicides specifically?

09:39AM

8 A. Yes, we asked for more information about the homicides.
9 The source said that they believed that the individuals -- that
10 there were several Honduran individuals that had caused trouble
11 in the warehouse and that they had been beaten, that a couple
12 of them had died and were found in the stolen truck and there
13 were a couple that had survived. The source believed that
14 there was some sort of tool like a golf club that was used to
15 beat the aliens.

09:39AM

16 Q. And did the source have any -- well, let me ask you this.
17 Based on what the source was telling you at this time, did you
18 have reason to believe that there were people still being held?

09:39AM

19 A. Yes. We had reason to believe that there were people
20 still being held. I mean that's the MO for how these
21 organizations operate.

22 Q. And based on the information that the source was giving
23 you, did you have reason to believe that some of those people
24 being held may have serious injuries?

09:39AM

25 A. Absolutely.

1 Q. All right. Did you ask the source about the specific
2 details of how the persons who did not survive, the homicide
3 victims, had been transported to where they were found?

4 A. Yes. We asked for that information and we were provided
09:40AM 5 with the information that the source had a girlfriend or -- I'm
6 not sure if it was a girlfriend or a wife, but romantic
7 relationship with a person from Peru and that the person from
8 Peru had actually driven the stolen vehicle with Mr. Duran
9 following in a vehicle that belonged to him, a Tahoe, a nearly
09:40AM 10 new Chevrolet Tahoe and that they took the bodies to the place
11 where they were going to dump them. They took gasoline and
12 tried to light the bodies in the vehicle on fire to destroy the
13 evidence.

14 Q. All right. Was there any information the source was able
09:41AM 15 to give about Wilmar Duran's state of mind or kind of how he
16 was responding to the situation?

17 A. Yes. So the source said that Mr. Duran was very nervous,
18 that he was considering leaving town, trying to abscond, said
19 that he was having dreams or visions where he could see the
09:41AM 20 people that were beaten and could see foam coming out of their
21 mouth so he was very disturbed.

22 Q. At that point were you concerned about what Wilmar Duran
23 might do at that point?

24 A. Yes, I was very concerned both for the safety of the other
09:41AM 25 smuggled aliens that were likely in the warehouse as well as --

1 I assumed it was just a matter of a very short time before
2 Mr. Duran absconded and it would be very difficult to locate
3 him.

4 Q. In your experience dealing with individuals who smuggle
09:42AM 5 humans into the country, can you tell us what you know about
6 their ability to -- well, their ability to get in and out of
7 the country?

8 A. Yes. So by nature, alien smugglers move people all over
9 the world surreptitiously. They have contacts throughout the
09:42AM 10 United States. They'll have contacts at not only our southwest
11 border, but the borders of Mexico and Guatemala and throughout
12 Central and South America. So they are the experts of moving
13 people secretly, yes.

14 Q. All right. In your experience dealing with these types of
09:43AM 15 individuals, once they are out of sight, is it very difficult
16 to locate them again?

17 A. It is very difficult to locate them again. Their networks
18 are -- they don't operate like ours. They operate on cash.
19 They operate word of mouth. It's just much more difficult to
09:43AM 20 track someone like that than it is just your everyday Joe.

21 Q. All right. Once the source had provided you with this
22 information, did you and Agent Lamb take any steps to try to
23 confirm that what the source had told you was true?

24 A. Yes. So the source provided a general area where they
09:43AM 25 believed the warehouse was. We went to that area and we

1 started surveillance just on our own to see if we could pick
2 anything up, but there were lots of -- it was storage buildings
3 and places without a lot of markings on them so we didn't make
4 a lot of headway there.

09:44AM

5 We were able to identify Mr. Duran's home on Cortina Drive
6 and at some point we reached out to the Fort Bend County
7 Sheriff's Office and we actually went to the sheriff's office
8 where we spoke with investigators, we saw the truck, and we
9 exchanged information and ideas.

09:44AM

10 Q. Okay. Let me ask you a couple of follow-up questions
11 there.

12 At the time that the source gave you the name of
13 Wilmar Duran, did you have that person identified at that time?

09:44AM

14 A. Yes, we had Mr. Duran identified pretty quickly. He had
15 immigration history as well as criminal history that we were
16 able to find pretty easily.

17 Q. And what was his status in the country?

09:45AM

18 A. Mr. Duran was a lawfully admitted permanent resident so he
19 was a national of El Salvador but with that lawfully admitted
20 permanent resident status, you can -- it's essentially an
21 immigrant visa so you can come and go as you like in the
22 United States.

09:45AM

23 Q. All right, sir. Are there times when a lawful permanent
24 resident can be deported from the country or have their ability
25 to be here rescinded?

1 A. Yes. The most common -- the most common cause for
2 something like that are criminal convictions.

3 Q. All right. And in this case, once you had him identified,
4 did you run his criminal history?

09:45AM

5 A. Yes, we did; and Mr. Duran had several criminal
6 convictions.

7 Q. All right.

8 MS. COLLINS: Your Honor, may I approach with
9 Government's Exhibit A?

09:45AM

10 THE COURT: Yes. Are you looking at your Exhibit A?

11 MS. COLLINS: Yes, Your Honor.

12 THE COURT: All right. You don't have a copy of it?

13 MR. DAVIS: We do, Your Honor.

09:46AM

14 THE COURT: All right. I just don't want you to have
15 to go back and forth. I want you to give him the exhibits you
16 need him to look at so that we don't have to go back and forth
17 away from this camera.

18 MS. COLLINS: Absolutely.

19 **BY MS. COLLINS:**

09:46AM

20 Q. All right. Agent Neal, looking at Government's Exhibit A,
21 can you tell us what that is?

22 A. Yes. It's a criminal history printout.

23 Q. All right. And is this the criminal history printout for
24 Wilmar Duran from back in 2006?

09:46AM

25 A. Yes, it is.

1 Q. And is the date and time that that was printed in
2 Government's Exhibit A?

3 A. Yes, the date and time is on it.

4 Q. All right. And is that November 21, 2006, at 10:46 A.M.?

09:46AM

5 A. Yes, it is. It looks like the first one off of the
6 11/21/06 has been cut off on the printout, but these were the
7 old dot matrix printers. It's common for, you know, a row to
8 be knocked off of it.

9 Q. Understood. And on the very last page of

09:47AM

10 Government's Exhibit A, is the full date of
11 November 21st, 2006, printed out a little bit more cleanly?

12 A. Yes, it is.

13 Q. All right. That date and time, was that the time period
14 where you were doing follow-up after your conversation with the
15 source?

09:47AM

16 A. Yes. Literally from the time I got off the phone, we
17 worked maybe 40 hours straight.

18 Q. All right. Now, you mentioned that you had him identified
19 and that you had an address on Cortina Drive; is that right?

09:47AM

20 A. That's correct.

21 Q. Were you able to lay eyes on Wilmar Duran?

22 A. I don't remember the first time we actually saw Mr. Duran
23 in person.

24 Q. All right. Fair enough.

09:48AM

25 Because of that, do you remember if it was before or after

1 you met with the Fort Bend Police Department?

2 A. I don't remember exactly.

3 Q. All right. Well, let's talk about your interactions with
4 Fort Bend. What was the purpose of going there and talking to
5 the investigators?

09:48AM

6 A. We were just trying to further the investigation to try
7 to -- our initial goal was to try to find the warehouse, try to
8 find the stash house and see if there were people that were in
9 jeopardy, that were injured, that sort of thing.

09:48AM

10 Q. All right. In the process of talking to the
11 investigators, were you able to or did they share information
12 that they had collected as a part of their investigation?

13 A. Yes, they did.

14 Q. In other words, did they tell you about what was collected
15 at the scene?

09:48AM

16 A. Yes, they did.

17 Q. As part of that, were you able to confirm that information
18 the source had given you was, in fact, correct?

19 A. Yes, I did. Meeting with Fort Bend didn't contradict
20 anything that we had thus far.

09:49AM

21 Q. And in this particular case, the specifics like that the
22 truck had been set on fire or attempted to, did that turn out
23 to be true?

24 A. Yes, it did.

09:49AM

25 Q. All right. Based on that, did you once again believe you

1 had credible information from the source?

2 A. Yes, I believed I had credible information from the
3 source.

4 Q. All right. Now, after speaking to Fort Bend, at some
09:49AM 5 point were you able to locate Wilmar Duran?

6 A. Yes, we were able to locate Mr. Duran.

7 Q. Once you located him, what were you hoping to accomplish
8 by surveillance on him?

9 A. We were hoping that he would lead us back to the warehouse
09:49AM 10 so we could identify the warehouse.

11 Q. All right. During this period of time -- well, do you
12 recall at what point this printout, this criminal history was
13 shared with you and Agent Lamb?

14 A. I don't remember exactly. It would have been normal for
09:50AM 15 me to have the information before this printout was done
16 because we had laptops, we had 24-hour law enforcement support
17 center that we can call at any time and we can give them
18 whatever information we have and they can -- they would have
19 already been able to provide criminal histories, immigration
09:50AM 20 histories, even commercial database information to us.

21 Q. All right, sir. So from your experience back in 2006, you
22 would believe that you would have had this information fairly
23 quickly?

24 A. Yes. I would have had the criminal history and the
09:51AM 25 immigration history very quickly.

1 Q. All right. And based on what you saw in the criminal
2 history, did you have reason to believe that Wilmar Duran was
3 deportable?

4 A. Yes.

09:51AM

5 Q. Why?

6 A. He had multiple criminal convictions, one of which was an
7 aggravated felony and another was a crime involving moral
8 turpitude. It was a theft charge.

09:51AM

9 Q. All right. Each of those convictions on their own, would
10 they have made Wilmar Duran deportable?

11 A. I don't remember specifically and it changes from time to
12 time, but at the time I believe you would have had to have both
13 convictions and you would have had to have -- you would have
14 had to have the judgment and conviction records from the court.

09:51AM

15 Q. All right. Based on both of these convictions and your
16 information at the time, did you believe that you could detain
17 and arrest for immigration purposes Wilmar Duran?

18 A. Yes, I believed that I could arrest and detain Mr. Duran.

09:52AM

19 Q. Now, let me ask you this. Did you immediately detain
20 Wilmar Duran when you first saw him?

21 A. No, I did not.

22 Q. Why not?

09:52AM

23 A. I was afraid if we took Mr. Duran into custody right away,
24 we may never be able to locate the warehouse. If there are
25 people that are locked in, it's a good chance they could just

1 be left there so we were hoping that we could get the warehouse
2 identified before we took Mr. Duran into custody.

3 Q. All right. Because of that, did you-all have continuous
4 surveillance on Mr. Duran hoping he would in fact lead you to
5 the warehouse?

6 A. If I remember correctly, once we located Mr. Duran, yes,
7 we tried to keep continuous surveillance on Mr. Duran.

8 Q. All right. As all of this is kind of unfolding, would it
9 be fair to say that there were a lot of moving pieces at that
10 time?

11 A. There were lots of moving pieces.

12 Q. Were there quite a few different agencies and different
13 departments within those agencies all trying to work to solve
14 these cases?

15 A. Yes. Not only Homeland Security Investigations, but
16 Fort Bend County Sheriff's Office, Houston Police Department
17 became involved. I believe the FBI was involved to some
18 extent.

19 Q. All right. Fair to say communication was not perfect at
20 that time?

21 A. Correct. And everybody was going -- was taking the best
22 leads that their agency had to try to -- all try to come up
23 with the same end.

24 Q. All right. Would it be fair to say that everyone was
25 trying to at least keep each other informed of what they were

1 doing?

2 A. Yes.

3 Q. And specifically were you working fairly closely with the
4 Fort Bend sheriff's department to aid each other's
09:54AM 5 investigations?

6 A. Yes, we were working fairly closely.

7 Q. All right. Did there come a point in time where you
8 learned that a warrant was being sworn out for the warehouse?

9 A. Yes.

09:54AM 10 Q. All right. And at the time do you recall whether or not
11 you were aware of where the warehouse had been located?

12 A. I don't remember the timeline exactly. I know before it
13 was served, I do remember going out and the warehouse was
14 identified through Houston Police Department efforts, I
09:54AM 15 believe, and I remember setting up surveillance on the
16 warehouse itself.

17 Q. All right.

18 INTERPRETER DEL VILLAR: The interpreter speaks.

19 May the interpreter just have a moment to change?

09:55AM 20 THE COURT: Yes.

21 (Off-the-record discussion.)

22 THE COURT: All right. Proceed.

23 MS. COLLINS: Yes, Your Honor.

24 **BY MS. COLLINS:**

09:55AM 25 Q. At the point where you knew a warrant was being sworn out

1 for the warehouse, were you concerned with Wilmar Duran's
2 whereabouts?

3 A. Yes, very concerned.

4 Q. Based on what the source had told you concerning his
09:55AM 5 nightmares and other concerns, were you afraid that
6 Wilmar Duran would run?

7 A. Yes, I was virtually certain if he learned that there was
8 a warrant being conducted at the warehouse that he would
9 definitely run.

09:55AM 10 Q. Based on that, did you make the decision to detain him
11 before that occurred?

12 A. Yes. The decision was made to detain him before that
13 occurred.

14 Q. All right. And who was present when he was taken into
09:55AM 15 custody?

16 A. I was present, but I was in my vehicle. Agent Lamb was
17 present. There were some members of the Hostage Rescue Team
18 for HSI that were present and I don't remember if there was
19 state and local involvement or not.

09:56AM 20 Q. All right. Let's talk about the HRT team that was there.

21 A. Okay.

22 Q. Was it common for them to be present at the time of an
23 arrest?

24 A. Yes, definitely if it related to human smuggling.

09:56AM 25 Q. All right. And why was that?

1 A. That was their investigative discipline was human
2 smuggling and hostage rescue.

3 Q. All right. Do you recall who actually placed hands on
4 Wilmar Duran and took him into custody?

09:56AM

5 A. I do not.

6 Q. All right. At the time that he was taken into custody --
7 well, let me ask you this. Who gave the order or who made the
8 decision, if you recall, to take him in when you did?

09:57AM

9 A. I honestly don't remember who gave that -- who gave the
10 order. I think it was understood that that was what we were
11 going to do.

12 Q. All right. Fair enough. And where were you when he was
13 taken into custody?

09:57AM

14 A. I believe I was on the street or in the driveway of the
15 residence.

16 Q. All right. And were you actually at Wilmar Duran's
17 residence at that time?

18 A. Yes.

09:57AM

19 Q. Okay. At the time that he was taken into custody, did you
20 believe that he was a deportable individual?

21 A. Yes, I did.

22 Q. Did you believe that you had the authority to take him in
23 under immigration statutes and laws?

24 A. Yes, I did.

09:57AM

25 Q. Along with that, at the time that he was taken into

1 custody, did you believe that you had probable cause to believe
2 that he had committed other felonies at that time?

3 A. Yes, I believed I had --

4 THE COURT: Excuse me. When you say, "other felonies,"
09:58AM 5 what are you referring to?

6 MS. COLLINS: Absolutely, Your Honor.

7 **BY MS. COLLINS:**

8 Q. Specifically based on the source --

9 THE COURT: Let me say it this way. Are you referring
09:58AM 10 to something other than the documents that he had looked at?

11 MS. COLLINS: The criminal history, Your Honor?

12 THE COURT: Yes.

13 MS. COLLINS: Yes, Your Honor.

14 THE COURT: All right. Let's proceed.

09:58AM 15 MS. COLLINS: Yes, Your Honor.

16 **BY MS. COLLINS:**

17 Q. Specifically did you believe you had probable cause that
18 Wilmar Duran had been involved in both human smuggling and the
19 homicides or murders of two individuals?

09:58AM 20 A. Yes, I believed I had probable cause to believe that.

21 Q. And at that time were you concerned that he was going to
22 flee?

23 A. Yes, I was very concerned.

24 MS. COLLINS: Pass the witness, Your Honor.

09:58AM 25 THE COURT: All right.

1 **CROSS-EXAMINATION**

2 **BY MR. DAVIS:**

3 Q. Good morning, Agent Neal.

4 A. Good morning.

09:59AM 5 Q. My name is Neal Davis.

6 THE COURT: Make sure you speak at the microphone, not
7 away from it.

8 MR. DAVIS: Yes, Your Honor.

9 THE COURT: The interpreters need to be able to hear
09:59AM 10 you.

11 MR. DAVIS: Yes, Your Honor.

12 **BY MR. DAVIS:**

13 Q. I have a few questions to ask you and maybe a few
14 documents to show you to try to clear up some of your
09:59AM 15 testimony.

16 This happened a long time ago, correct?

17 A. Yes, sir, it happened a long time ago.

18 Q. November of 2006, correct?

19 A. Correct.

09:59AM 20 Q. You said you initially received a phone call of
21 November 20 of 2006 when you were at dinner with your family,
22 correct?

23 A. Yes, sir.

24 Q. And about what time was that? Do you recall?

09:59AM 25 A. No, sir, I don't recall. No, sir, I don't recall.

1 Q. That's fine. It was nighttime though; is that correct?

2 A. Yes, sir, it was after work.

3 Q. So probably it could have been 7:00, 8:00. We don't know,
4 right?

10:00AM 5 A. Correct.

6 Q. But it was in the evening?

7 A. It was in the evening.

8 Q. All right.

9 A. I remember the restaurant.

10:00AM 10 Q. You do?

11 A. Yes, sir.

12 Q. What restaurant?

13 A. Rico's.

14 Q. Okay. That phone call was a very short phone call though,
10:00AM 15 correct?

16 A. Yes, sir, it was a short phone call.

17 Q. Okay. Then you took your family home and called
18 Agent Lamb?

19 A. Correct. Yes, sir.

10:00AM 20 Q. Okay. And the basics of the initial phone call you got in
21 the restaurant were that the CI -- your CI said, "Did you see
22 the news? There were two Hispanic males that were killed and
23 left in a stolen pickup truck somewhere in Fort Bend County,"
24 correct?

10:00AM 25 A. Yes.

1 Q. And you were familiar with that?

2 A. Yes, I was familiar with that. I remembered it.

3 Q. It drew your attention because it seemed like this could
4 be something that you would deal with personally at your job,
10:00AM 5 correct?

6 A. Correct.

7 Q. Okay. So you got with Agent Lamb. How long was it
8 approximately between the time you got home with your family
9 and called Agent Lamb?

10:01AM 10 A. I called Agent Lamb -- it would have been short, probably
11 within 30 minutes.

12 Q. So after you guys ate dinner -- between the time of the
13 first call from the CI to the time you called Agent Lamb was
14 about 30 minutes?

10:01AM 15 A. That's to the best of my recollection, yes, sir.

16 Q. Okay. And then you and Agent Lamb decided to meet up and
17 try to formulate a game plan, correct?

18 A. Correct.

19 Q. Where did you guys meet?

10:01AM 20 A. I don't remember. I think it was probably 126 Northpoint,
21 which was one of our offices. It would have been my office at
22 the time.

23 Q. Okay.

24 A. And his too, I think.

10:01AM 25 Q. So it was at an office.

1 Did you take any initial notes concerning the initial
2 phone call that you had with the CI?

3 A. I don't remember taking any notes, and I haven't been able
4 to find any notes.

10:02AM 5 Q. Okay. You don't remember taking any notes, and you
6 couldn't find any notes?

7 A. Correct.

8 Q. When was the last time you looked for notes concerning
9 this case?

10:02AM 10 A. It's been years.

11 Q. Okay. You don't recall when, what year? I know this is
12 an old case, but do you recall the last time you looked for
13 your notes?

14 A. Not exactly, no.

10:02AM 15 Q. Okay. Who asked you to look for your notes?

16 A. One of the other agents that's assigned to the case. I
17 don't know if it's Agent Perez. Probably Agent Perez.

18 Q. And I may ask you some more about your notes.

19 A. Sure.

10:02AM 20 Q. But you and Ray Lamb met at your office and decided to do
21 a game plan because one person can't meet with a CI. It has to
22 be two people, correct?

23 A. Correct.

24 Q. Okay. And you guys were going to meet the CI at her
10:03AM 25 residence, right?

1 A. Correct. At the source's residence.

2 Q. Okay. So when you met with the CI, you had her come into
3 the car and you and Agent Lamb talked to her, correct?

4 A. We talked to the source, correct.

10:03AM 5 Q. And when you talked to her, did you take notes?

6 A. I don't remember.

7 Q. Okay. And if you don't, that's fine. You don't remember
8 if you took notes. Did Agent Lamb take notes?

9 A. I don't remember.

10:03AM 10 Q. Okay. Because later on you will file an ROI, a report of
11 the incident, later on, correct?

12 A. Correct.

13 Q. And you want that report to be as accurate as possible,
14 correct?

10:03AM 15 A. Correct.

16 Q. And you did, as a matter of fact, take or create an ROI;
17 is that correct?

18 A. I'm not certain if I created an ROI or Agent Lamb did, but
19 there was an ROI created.

10:04AM 20 Q. All right. Now, let's talk a little bit about this CI.
21 You said you had used the CI for about a year or a year and a
22 half; is that correct?

23 A. That's correct to the best of my recollection.

24 Q. Okay. And she had helped you with two or three
10:04AM 25 indictments; is that correct?

1 A. Yes. The source helped me with two or three indictments
2 and one investigation, but there were several indictments.

3 Q. And the whole reason this person is a CI is because she
4 had gotten into trouble and wants to help in other
10:04AM 5 investigations and perhaps help in other investigations because
6 she may have information concerning colleagues that are also
7 criminals; isn't that correct?

8 A. So, I don't remember the -- I don't remember the specifics
9 on what the source's initial motivation was. I remember how I
10:05AM 10 discovered the source, but that's all. As far as prior
11 criminal history, I suspect there was some, but I honestly
12 don't know what it was.

13 Q. Well, you said that she had given you information
14 concerning successful investigations in the past. Had she
10:05AM 15 given you any information that was not successful?

16 A. No. All the information that I had received from the
17 source had been credible information.

18 Q. All right. So the CI got into the vehicle and she gave
19 you some more information that you talked about on direct, but
10:05AM 20 isn't it true this information that she was giving you wasn't
21 information that she personally got? Isn't that true?

22 A. A lot of the information that the source gave us was
23 information through other people. That's correct.

24 Q. And that information, the actual source of the information
10:06AM 25 was from Judith Lopez, who is the defendant's sister, isn't

1 that correct?

2 A. To the best of my recollection there was direct
3 information from Duran. There was information from the sister
4 of Mr. Duran as well as the mother of Mr. Duran.

10:06AM

5 Q. Okay. But your CI had no direct information, had not
6 talked to Mr. Duran-Gomez, had just talked to two other people
7 who may have had information concerning this and relayed that
8 to you; isn't that right?

10:07AM

9 A. I couldn't say that with 100 percent certainty. To the
10 best of my recollection, I believe that the source had some
11 direct information from Mr. Duran, but the majority of the
12 information came from other sources.

13 MR. DAVIS: May I approach the witness, Your Honor?

14 THE COURT: Is this going to be a document?

10:07AM

15 MR. DAVIS: It is. It is Exhibit 23.

16 THE COURT: From your book? Give him a book if he
17 needs it so you don't go back and forth.

18 MR. DAVIS: I understand, Judge. I'm trying to make it
19 easy because I'm not going to use all these exhibits.

10:07AM

20 THE COURT: So am I. So give him that and go on and
21 see later on if you need to give him the book.

22 MR. DAVIS: Okay. Thank you, Judge.

23 THE COURT: I don't want to spend time walking back and
24 forth.

10:07AM

25 MR. DAVIS: I understand, Your Honor.

1 **BY MR. DAVIS:**

2 Q. I would like to show you what's been marked as Defendant's
3 Exhibit 23. Could you go ahead and take a quick look at that
4 if you can.

10:08AM 5 THE COURT: You can't do it there.

6 MR. DAVIS: I wanted to put it together for him if
7 that's okay.

8 THE WITNESS: Your Honor, do you want --

9 THE COURT: He's going to ask you a question. Did you
10 look at it? Number 23?

11 THE WITNESS: Do you want me to read the report in its
12 entirety --

13 THE COURT: No. He asked you did you look at it. Have
14 you seen it? Just answer "yes" or "no." You've looked at it.

10:08AM 15 THE WITNESS: Yes, sir, I see it.

16 **BY MR. DAVIS:**

17 Q. That's an ROI that was written after your meeting with the
18 CI. In fact, this ROI was written on December 5th of '06, a
19 couple of weeks later, isn't that correct -- or a week later,
20 maybe a week and a half?

21 A. Yes, sir. It shows the report date as December 5, 2006.

22 Q. Now, isn't it true that in that ROI all of the information
23 that was given to you was -- by the CI was information that was
24 relayed to you from Judith and perhaps her mother, isn't that
25 correct, according to that ROI?

10:09AM

1 THE COURT: Do you have a particular point you want him
2 to look at?

3 MR. DAVIS: Well, Judge, I think the point I'm trying
4 to make is --

10:09AM 5 THE COURT: No. Is there a point in the document that
6 says that?

7 MR. DAVIS: No, it's not. It's the document in its
8 entirety.

9 THE COURT: Okay.

10:09AM 10 MR. DAVIS: Can you repeat the question, sir?

11 **BY MR. DAVIS:**

12 Q. Right. That report just says that you received
13 information from your CI that the CI had learned from other
14 people that Mr. Duran-Gomez could possibly be involved in this
10:09AM 15 murder?

16 A. That is what the report says, yes, sir.

17 Q. Okay. All right. So what you have then is the CI who is
18 telling you information about a rumor or something that she had
19 heard, correct?

10:10AM 20 A. I don't know that I could categorize it as a rumor.

21 Q. At that point it's a rumor because you needed to do some
22 further investigation, don't you?

23 A. Yes, correct.

24 MR. DAVIS: If you want to, just go ahead and put that
10:10AM 25 in.

1 May I approach again? I'm just going to put it
2 together. I shouldn't have done that. Okay.

3 **BY MR. DAVIS:**

4 Q. Okay. So at that point you have information that needs to
10:10AM 5 be corroborated; but even though you have a CI who is giving
6 you credible information, you're receiving information from a
7 source, another source that you don't know is credible or not
8 credible, isn't that correct? That source being Judith Lopez?

9 A. Yes, I didn't have a relationship -- a working
10:11AM 10 relationship with Judith.

11 Q. But at that point after talking to the CI, you knew
12 Judith Lopez was somebody who was an interested party in this,
13 correct? A witness perhaps?

14 A. Correct.

10:11AM 15 Q. Did you run any criminal history on Judith Lopez?

16 A. I don't remember.

17 Q. Did you know that she had been charged in several other
18 crimes, especially crimes that we consider moral turpitude or
19 would go toward her truthfulness?

10:11AM 20 A. I don't remember.

21 Q. That she had been charged and convicted of tampering with
22 government records?

23 A. No, I don't recall that.

24 Q. Okay. Or the two thefts that she may have.

10:11AM 25 But that would be important to know, wouldn't you agree?

1 A. It would be important to know if you were using that
2 person as a witness.

3 Q. Well, she is a witness in this case. It would be
4 important to know because that goes toward her credibility for
10:12AM 5 being truthful. You need to check out your witnesses in your
6 investigation, correct?

7 A. Correct. But at this stage I'm following leads in my
8 investigation so...

9 Q. All right. And your lead right now is that Judith gave
10:12AM 10 your CI information concerning Wilmar Duran-Gomez, correct?

11 A. That's a small part of it.

12 Q. At what time do you recall meeting this CI? Was it still
13 late in the night of 11/20 or early in the morning of 11/21?

14 A. Is the question when did I initially meet with the CI?

10:12AM 15 Q. Meet face-to-face with Agent Lamb, this conversation you
16 had in the car?

17 A. It would have started approximately two hours after I left
18 dinner.

19 Q. So it was still --

10:13AM 20 A. So it was at night. I mean, it was, I would guess, around
21 9:00 P.M., maybe. I remember it was dark.

22 Q. All right. After that, what did you and Agent Lamb do?

23 A. We attempted to identify the warehouse. We attempted to
24 identify Mr. Duran's residence and any vehicles that might be
10:13AM 25 associated with Mr. Duran.

1 Q. Did you try to run a criminal history or a check to try to
2 find out maybe different addresses? You said you could look up
3 his immigration history and his commercial data. Did you run
4 it immediately after that?

10:13AM

5 A. I don't remember specifically. I suspect that I did run
6 his immigration and criminal history relatively quickly.

7 Q. Okay. So you and Agent Lamb, you said in direct that one
8 of the things that you learned was the general area where the
9 warehouse was located, correct?

10:14AM

10 A. Correct.

11 Q. That was around Bissonnet and Hillcroft; is that correct?

12 A. I would have to review the notes. It was
13 Southwest Houston. That could be.

10:14AM

14 Q. Okay. Did you contact Fort Bend County Sheriff's Office
15 immediately and let them know that you had a lead in this case?

16 A. I contacted them during the night at some point. I'm not
17 sure exactly how long I waited. I just don't remember.

18 Q. Okay. Did you, after meeting with the CI in the car, go
19 back to the office and try to formulate a game plan?

10:15AM

20 A. No, I don't remember going back to the office.

21 Q. Okay. Where did you guys go after you met with the CI?
22 I'm just trying to get that clear.

23 A. We were out in the field. We were between the general
24 area of the warehouse and the residence and that's when we

10:15AM

25 decided to reach out to Fort Bend County and we ended up

1 driving to Fort Bend County that night.

2 Q. Did you find a location where this warehouse was?

3 A. We didn't find the specific location.

4 Q. In fact, after running -- I won't get to that just yet.

10:15AM 5 So you-all were just kind of going around Bissonnet and
6 Hillcroft looking -- did you have the CI with you?

7 A. I think the source was with us during -- when we initially
8 started and then we took the source back and then we went back
9 out by ourselves.

10:15AM 10 Q. I may have asked this question. Did you take any notes
11 concerning this?

12 A. I don't remember taking notes, and I haven't been able to
13 find any notes. So it's possible, but I don't have them.

14 Q. Okay. So you had the name Wilmar Rene Duran-Gomez?

10:16AM 15 A. Correct.

16 Q. Okay. You're not sure if you ran his criminal history
17 just yet when you were out in the field?

18 A. I don't remember the exact time that I ran his criminal
19 history.

10:16AM 20 Q. You didn't run any other history concerning immigration or
21 try to find something where -- run him and try to find his
22 address. You didn't do any of that?

23 A. Yes, we were definitely doing that. We were trying to
24 further the investigation any way we could. So we were

10:16AM 25 searching for that sort of information.

1 And at some point we got closer on the warehouse as well.
2 There was another warehouse that was associated with a business
3 that Mr. Duran had.

4 Q. Sure. And we'll get to that in just a second.

10:17AM 5 So you guys are trying to use the database to try to find
6 out where he is and everything; but to be clear, the murders
7 initially happened almost a week before, correct?

8 A. That's correct. I think it was about a week before.

9 Q. So it's been quite a few days and Mr. Duran-Gomez is still
10:17AM 10 in the city from your source's information, correct?

11 A. Yes, we believed he was still in the city.

12 Q. He hasn't fled?

13 A. Correct.

14 Q. Okay. At some point in time, you did find the general
10:17AM 15 area where a warehouse that was associated with Mr. Duran-Gomez
16 was located, correct?

17 A. Correct.

18 Q. Now, that's from running, like, a data or an Accurint,
19 correct?

10:18AM 20 A. Yes. It's been so long ago, I don't remember exactly how
21 we came up with it or who put their finger on it initially, but
22 I remember getting the information relayed to us in the field.

23 Q. Okay. Do you know who relayed that information to you in
24 the field?

10:18AM 25 A. I do not.

1 Q. Okay. And that location to that warehouse was not the
2 warehouse that was searched; isn't that correct?

3 A. That is correct.

4 Q. Okay. It was another completely different warehouse,
5 correct?

6 A. Yes, it had a different street address on the same street
7 in the same block, I believe.

8 Q. Okay. In fact, there was never a connection made from the
9 warehouse that was searched to Mr. Duran-Gomez other than later
10 on being shown the warehouse by somebody else, correct? There
11 was no paper -- there was nothing in your searches to show that
12 the warehouse that was searched was associated with
13 Mr. Duran-Gomez; isn't that correct?

14 A. Okay. So I think I need to clarify something. So I was
15 not the affiant for the search warrant.

16 Q. Let me stop you there because I'm not asking you that
17 question.

18 A. Okay.

19 Q. What I'm asking is that in your investigation, you never
20 learned that the warehouse that was searched had any
21 association with Mr. Duran-Gomez through a lease or anything,
22 correct?

23 A. Well --

24 Q. I'm asking this question poorly. Let me start all over.

25 You got an address on Ashcroft Drive -- 7935 Ashcroft

1 Drive, correct?

2 A. I don't remember the specific address.

3 Q. But that's not the address of the warehouse that was
4 searched, right?

10:19AM 5 A. I don't think so.

6 Q. Okay. You got that information by running
7 Wilmar Duran-Gomez on a database and that address popped up,
8 correct?

9 A. I believe that's accurate, correct.

10:20AM 10 Q. The warehouse that was searched never popped up on any
11 search of Mr. Duran-Gomez, correct?

12 A. That came from --

13 Q. That came from somebody else?

14 A. That came from somebody else. I don't remember ever --
10:20AM 15 that specific -- I don't remember us ever getting that specific
16 address through any sort of commercial database or criminal
17 history or anything that we were trying to run out in the
18 field.

19 Q. Okay. But you're looking in that general area for the
10:20AM 20 warehouse?

21 A. Correct.

22 Q. Okay. But you did find a home address for Mr. Duran-Gomez
23 in your searches, correct?

24 A. Correct. I don't remember if it was from the source or if
10:20AM 25 we found it through the commercial database; but yes, we found

1 his address.

2 Q. And that was on Cortina Drive?

3 A. Correct.

4 Q. C-O-R-T-I-N-A Drive, correct?

10:21AM 5 A. Correct.

6 Q. Did you go to that address?

7 A. Yes.

8 Q. Okay. Did you see Mr. Duran-Gomez there?

9 A. I don't remember seeing Mr. Duran-Gomez until he was taken
10 into custody there.

11 Q. Did you have officers from one of these agencies conduct
12 surveillance at that address?

13 A. Yes.

14 Q. And when? When did that surveillance start?

10:21AM 15 A. The surveillance started as soon as we had people
16 available. We were trying to be between the residence and the
17 warehouse.

18 Q. You had a lot of agencies. You're looking for the
19 warehouse, but you also have an address where Mr. Duran-Gomez
10:21AM 20 is. You're afraid he's going to flee. You had plenty of
21 people to have around conducting surveillance. Do you recall
22 when surveillance started on the house? Was it on 11/20 or was
23 it on 11/21?

24 A. I don't remember when specifically the surveillance
10:22AM 25 started at the Cortina address and also to clarify, I wasn't in

1 charge of the surveillance. I'm essentially assigned to a
2 different investigative group and I get a colleague -- they're
3 only two of us. It's not like we have our group and our
4 surveillance that we can call on. So what I was trying to
10:22AM 5 explain, there were lots of moving pieces.

6 Q. Well, let me stop you because I understand what you're
7 saying. You're not in charge of this investigation. You're
8 not directing people. I'm just asking you questions if you
9 knew when surveillance started on Cortina.

10:22AM 10 A. I don't remember exactly, no, sir.

11 Q. All right. At some point in time -- well, you said -- you
12 did lay eyes on the defendant. When was the first time you saw
13 the defendant?

14 A. I remember seeing him specifically when he was arrested,
10:23AM 15 but I also seem to remember that we had seen his vehicle in the
16 area of the warehouse, but I can't remember. I don't -- I
17 didn't positively identify him in the vehicle.

18 Q. All right. But that was the day before on 11/20 that
19 somebody spotted him in the vehicle or that you may have seen
10:23AM 20 him in the vehicle, correct?

21 A. It could have been 11/20. It could have been in the
22 morning hours of 11/21. It all runs together.

23 Q. Do you remember where that vehicle went to?

24 A. It went to Cortina Drive.

10:23AM 25 Q. Okay. So he went home?

1 A. Correct.

2 Q. And he stayed home?

3 A. To the best of my recollection, yes.

4 Q. Okay. Now, you said on direct examination that you spoke
10:24AM 5 to the investigators at some point with Fort Bend Sheriff's
6 Office and they told you certain aspects of the crime scene and
7 the crime scene being where the truck was found and that seemed
8 to corroborate your story that was given to you by your CI?

9 A. That's correct.

10:24AM 10 Q. But still at this point you hadn't tried to do any
11 investigation on the actual source of the information,
12 Judith Lopez or Judith's mom?

13 A. No, I hadn't.

14 Q. Okay. You ran his criminal history and you discovered
10:24AM 15 that he had two -- at least two what you considered to be --
16 well, one aggravated felony and a crime involving moral
17 turpitude. You ran this criminal history?

18 A. Not the printout. I did not run that. It was run by
19 another agent in the office.

10:25AM 20 Q. Another agent in the office. But did you have this
21 information before 11/21 at 10:00 in the morning?

22 A. I don't remember specifically, but I suspect that I did
23 have that information almost immediately.

24 Q. Okay. Now, this information you said involves possible
10:25AM 25 convictions of a crime of moral turpitude. And do you have

1 Government's Exhibit A in front of you?

2 A. Yes, I do.

3 Q. And that crime of moral turpitude is what?

4 A. Theft.

10:25AM

5 Q. Now, you've been -- you've said that the laws change about
6 what can be considered a crime of moral turpitude or an
7 aggravated felony. They've changed quite a bit over the years,
8 haven't they?

10:26AM

9 A. They do change and also whether that particular conviction
10 is sufficient.

11 INTERPRETER DEL VILLAR: The interpreter speaks. I'm
12 sorry I have to interrupt the proceedings.

13 Sarita, please mute your phone. I can still hear
14 you on the phone. Thank you.

10:26AM

15 I'm sorry, Your Honor. I'm ready to continue.

16 THE COURT: No problem.

17 MR. DAVIS: May I approach, Your Honor? I think I left
18 some notes.

19 THE COURT: Sure.

20 **BY MR. DAVIS:**

21 Q. Okay. The crime of moral turpitude you're talking about
22 is the theft, correct?

23 A. Correct.

10:26AM

24 Q. And then the aggravated felony is the aggravated assault
25 deadly weapon, correct?

1 A. Correct. And actually the aggravated assault, it may have
2 also fallen under the CIMT as well. I don't remember
3 specifically.

4 MR. DAVIS: May I have just a moment, Your Honor?

10:27AM

5 THE COURT: Yes.

6 (Brief pause in the proceedings.)

7 **BY MR. DAVIS:**

10:28AM

8 Q. All right. Agent, that notebook has Tabs 1 through 8, I
9 think. If you look at the tap right before Tab Number 4 is
10 Defendant's Exhibit 37. If you go to Tab 4 and then work
11 backwards, it's quite a few pages; and you'll see Defendant's
12 Exhibit 37.

13 And that page starts with "Request for Certified Copies"
14 at the top.

10:29AM

15 THE WITNESS: Mr. Davis, you say I'm looking for
16 Exhibit Number 37?

17 MR. DAVIS: Yes.

18 THE COURT: I tell you what. Can you find it for him?

19 THE WITNESS: I found 36. There's 37.

20 MR. DAVIS: And --

21 THE COURT: Let's don't talk. I mean, just point it
22 out to him and then ask the question.

23 **BY MR. DAVIS:**

10:30AM

24 Q. If you go to three pages, four pages from Exhibit 37, you
25 will see the order for deferred adjudication that's written on

1 the top. If you look at the bottom, you will see
2 "COURTDOCS-0204." It's a handwritten order.

3 Do you have that?

4 A. Yes, sir. I'm looking at Order Deferring Adjudication of
5 Guilt.

6 Q. That's it. And are you familiar with these orders?

7 A. (No response.)

8 Q. Well, if you look on this order, if you go down about in
9 the middle of the page, you will see it's handwritten

10 "Aggravated Assault," correct?

11 A. Correct.

12 Q. And if you go down just a little bit, the next line, it
13 says, "Seven years DAG."

14 That means seven years deferred adjudication. Do you see
15 that?

16 A. Yes, I do.

17 Q. And then you will see a bunch of circles about in the
18 middle of the page, but there's three lines each with circles.
19 On the third line, it says: "Affirmative Findings."

20 And do you see "Affirmative Findings"? It's next to a
21 bunch of circles and as a matter of fact, there's a circle with
22 an X through it and it's that same line that says:
23 "Affirmative Findings"?

24 A. Yes, I see the circle with the X, "Affirmative Findings."

25 Q. Okay. And that first circle that is circled "NA" is for

1 deadly weapon. It says: "Deadly Weapon." Is there
2 affirmative finding? It says "NA."

3 A. Yes, there is.

4 Q. So this isn't an aggravated assault deadly weapon, is it?
10:31AM 5 There's no affirmative finding of a deadly weapon. It's just
6 an aggravated assault?

7 A. The affirmative finding deadly weapon says "NA."

8 Q. Okay.

9 A. Violence, yes.

10:32AM 10 Q. Okay. And an assault isn't an aggravated felony
11 especially if there's imprisonment of less than a year. In
12 fact, he wasn't imprisoned. He was given probation, correct?

13 A. I think there were two parts to the question and could you
14 go back to the first part, please.

10:32AM 15 Q. Sure. The first part is he didn't receive any jail time
16 at all, did he?

17 A. No. It looks like in the order he did not receive jail
18 time for that.

19 Q. He just did probation?

10:32AM 20 A. Correct.

21 Q. So it's not an aggravated felony?

22 A. I couldn't tell you if it was an aggravated felony right
23 off the top of my head.

24 Q. All right. Then the other crime of moral turpitude is the
10:32AM 25 theft, right?

1 A. Correct.

2 Q. So you're basing the probable cause, at least for your
3 immigration arrest, for aggravated felony and a theft. And a
4 theft in 2006 wasn't considered a crime of moral turpitude;
5 isn't that correct?

6 A. I'm sorry. One more time.

7 Q. Well, the BIA -- oh, I can't remember what the "BIA"
8 stands for.

9 THE COURT: Let's do it this way. He can't argue with
10 it. If the sentencing guidelines and the law says it's not, it
11 really doesn't matter what he says.

12 MR. DAVIS: That's true, Your Honor. And for the
13 record, the BIA didn't rule until 2016 that a theft was a crime
14 of moral turpitude.

10:33AM 15 THE COURT: And it was after 2016, did you say, that it
16 was considered a crime of moral turpitude?

17 MR. DAVIS: That's correct.

18 THE COURT: We can argue about that. If the government
19 wants to take that up, fine. But at the time if the findings
20 or the rule was that a crime of theft was not one involving
21 moral turpitude, then that's the law. Let's proceed.

22 MR. DAVIS: Thank you, Judge.

23 **BY MR. DAVIS:**

24 Q. All right. At that time in direct you said you had reason
10:34AM 25 to believe that he was deportable, correct?

1 A. Correct.

2 Q. And you're basing that on the aggravated felony and the
3 crime of moral turpitude, correct?

4 A. I was basing it on the two convictions.

10:34AM 5 Q. That you found from your criminal history?

6 A. The two convictions that we found from the criminal
7 history, correct.

8 Q. And nothing more, at least at that point, correct, just
9 the criminal history?

10:34AM 10 A. Correct, off the criminal history.

11 Q. But you do have access to his immigration history or any
12 commercial databases too, correct?

13 A. That's correct.

14 Q. And you didn't go further in your investigation at least
10:34AM 15 at that point to try to run an immigration history on him, had
16 you?

17 A. I'm almost certain that I had Mr. Duran's immigration
18 history.

19 Q. Did you have that in your notes or anything?

10:35AM 20 A. I don't remember specifically where it was, but it would
21 have been something that I would have gotten very quickly.

22 Q. Now, you said at that point you think you had reason to
23 believe that you could detain him or arrest him for an
24 immigration violation, correct?

10:35AM 25 A. Correct.

1 Q. But the second prong to that is he must be a flight risk,
2 too; isn't that true?

3 A. I'm sorry. Would you repeat that, please?

4 Q. Yes. The second prong to that, you just can't arrest him
10:35AM 5 because you believe that he has an immigration arrest. It's a
6 civil proceeding, right? He must have an immigration issue
7 plus be a flight risk, isn't that true?

8 MS. COLLINS: Your Honor, we have to object to calling
9 for the ultimate conclusion.

10:35AM 10 **BY MR. DAVIS:**

11 Q. Let me ask you this. You believed he was going to flee?

12 A. Yes, I believed Mr. Duran was going to flee.

13 Q. It's been a week since the murders and he hasn't fled,
14 correct?

10:36AM 15 A. Correct.

16 Q. Okay. You've conducted surveillance on him and he hasn't
17 fled, correct?

18 A. Correct.

19 Q. As a matter of fact at any point in time during almost the
10:36AM 20 20 hours of surveillance you conducted on Mr. Duran-Gomez, it
21 didn't look like he was going to flee, did it?

22 A. That's correct. He hadn't fled yet.

23 Q. The first time you may have laid eyes on him was when
24 Mr. Duran-Gomez was being followed to an apartment complex
10:36AM 25 somewhere on the South Sam Houston Tollway, correct?

1 A. Yes. That's possible.

2 Q. And he went from there back home, correct?

3 A. Correct.

4 Q. And he stayed at home almost the entire night, correct?

10:36AM 5 A. Correct.

6 Q. Right?

7 A. Yes.

8 Q. And as a matter of fact when he was arrested -- and you
9 were there during the arrest, correct?

10:36AM 10 A. Yes.

11 Q. When he was arrested, when he left, when he was leaving
12 his house, he was leaving his house with his girlfriend, right?

13 A. Correct.

14 Q. And he wasn't carrying any luggage, was he?

10:37AM 15 A. Not that I remember.

16 Q. And this has been a week later that you -- and he still
17 hasn't gone anywhere. He stayed right there in Houston at his
18 home, right?

19 A. Correct.

10:37AM 20 Q. So that's not an indication of him wanting to flee, right?
21 I mean he's staying where he's staying.

22 THE COURT: I think this is argumentative. That's my
23 call. That's my call.

24 MR. DAVIS: I'll move on, Your Honor.

10:37AM 25 THE COURT: Thank you.

1 **BY MR. DAVIS:**

2 Q. Let's talk a little bit about the surveillance. At one
3 point in time he was even surveilled by air, right?

4 A. I don't remember specifically, but it's possible.

10:38AM 5 Q. Okay. All right. You worked on this for, you said,
6 40 hours straight, right?

7 A. Approximately.

8 Q. And I was trying to get a timeline as to what's going on
9 and I think what had happened is that after you met with the CI
10:38AM 10 and you got with Agent Lamb, you guys went out -- I'm sorry.
11 That's backwards.

12 You got with Agent Lamb, you met with the CI, you went to
13 Southwest Houston looking for the warehouse. Sometime at that
14 point you helped with surveillance, right?

10:38AM 15 A. Correct.

16 Q. And when you did help with surveillance, did you also help
17 surveil Cortina Drive?

18 A. I think I did at some point. It's just hard to remember
19 that far back.

10:39AM 20 Q. Okay. Did you go around where all these warehouses were
21 in the general area that you knew of?

22 A. Yes.

23 Q. Now, at some point in time, the warehouse that was
24 searched, that location was given by somebody else, but you
10:39AM 25 weren't part of that investigation; is that correct?

1 A. That's correct.

2 Q. Okay. Now, you said in direct testimony that you didn't
3 want to take the defendant into custody who you had been
4 surveilling for quite a while because you wanted to get where
5 the warehouse was; is that correct?

10:39AM

6 A. That's correct.

7 Q. And that's because -- well, why? I mean you could have
8 taken him into custody and find out where the warehouse is,
9 couldn't you have?

10:40AM

10 A. If I took Mr. Duran into custody before I knew where the
11 warehouse was, then I'm basing all of my hopes that Mr. Duran
12 will tell me where the warehouse is. It could have a hundred
13 people in it that are locked up with no food or water or
14 anything.

10:40AM

15 Q. I understand. I understand. But isn't it also true that
16 you're just suspecting right now that he's involved in human
17 smuggling. You don't have any direct proof that he's involved
18 in any human smuggling, isn't that correct? It's all based on
19 a rumor from a third party that you haven't even looked at yet?

10:40AM

20 MS. COLLINS: Objection. Argumentative, Your Honor.

21 THE COURT: The form of the question is a problem.

22 Let's don't make speeches. I'm the Court and I'm hearing --

23 MR. DAVIS: I understand, Judge. I'm trying to make my
24 point and also ask the question.

10:40AM

25 THE COURT: You can argue your point to me.

1 MR. DAVIS: Okay. Thanks, Judge.

2 BY MR. DAVIS:

3 Q. Okay. The only probable cause you have for human
4 smuggling at this point is from your CI, right?

10:41AM 5 A. That's correct. I'm following leads that I had initially
6 received from a CI.

7 Q. Right. And the only probable cause that you have for a
8 murder is from your CI; isn't that correct?

9 A. That's where it started, correct.

10:41AM 10 Q. Right. Okay. There's nothing that connects
11 Mr. Duran-Gomez to human smuggling at any point until -- let me
12 strike that because that's not a question I want to ask. Let
13 me move on.

14 Did you personally go to the warehouse that was searched?

10:42AM 15 A. Yes, I was at the warehouse that was searched.

16 Q. And when did you do that?

17 A. I was surveilling the warehouse before the entry was made.
18 I remained outside after entry was made and while the scene was
19 being processed by the FBI.

10:42AM 20 Q. Was that after Mr. Duran-Gomez's arrest?

21 A. Yes, it was.

22 Q. What time was Mr. Duran-Gomez arrested? Do you recall?
23 It was 6:20 P.M.; isn't that true?

24 A. That seems accurate. I remember it being in the evening.

10:43AM 25 Q. Okay. He wasn't taken to a magistrate judge immediately,

1 was he?

2 A. No, he was taken into immigration proceedings.

3 Q. Okay. Did he see an immigration judge?

4 A. I'm sure he did at some point, but that's not part of the
10:43AM 5 initial immigration proceedings.

6 Q. But you didn't have him see an immigration judge or
7 anything, did you?

8 A. I would never have any detainee see an immigration judge.
9 That's not part of what I do.

10:43AM 10 Q. Did you interview -- and you interviewed Mr. Duran-Gomez
11 the next day, did you not?

12 A. No.

13 Q. You didn't?

14 A. Not that I remember.

10:43AM 15 MR. DAVIS: May I have just a moment, Your Honor?

16 THE COURT: Yes, please.

17 (Brief pause in the proceedings.)

18 MR. DAVIS: I just have a couple of more questions for
19 you.

20 **BY MR. DAVIS:**

21 Q. Your confidential informant that you had used, you had
22 known her for about a year and a half, right?

23 A. Yes, to the best of my recollection.

24 Q. And it's true that she was also undocumented; isn't that
10:45AM 25 true?

1 A. Yes, I believe so.

2 Q. And that she was going to be deported because of a
3 criminal charge and that's why she came to try to work with
4 you; isn't that true?

10:45AM

5 A. That could be true.

6 Q. And she only gets to stay because she's worked out a deal
7 where as long as she provides you information, she gets to stay
8 in the country; isn't that true?

9 A. So while we use confidential informants --

10:45AM

10 Q. Well, my question is as long as she helps you, she gets to
11 stay in the country, right?

12 A. As long as I'm using the confidential informant, I have to
13 provide a parole into the country and an employment
14 authorization document to the informant.

10:46AM

15 Q. So she has a pretty good motive to come to you, correct?
16 She has a pretty good motive to try to keep working with you
17 and give you information, correct?

18 A. I assume that's her motive, yes.

19 Q. Absolutely. And it's up to you to make sure that
20 information is good information, correct?

10:46AM

21 A. Correct.

22 Q. Now, at some point in time, you did look at
23 Mr. Duran-Gomez's immigration history; isn't that correct?

24 A. That's correct.

10:46AM

25 Q. Now, his two convictions were from 1993 and the aggravated

1 assault or the assault case was from 2003, isn't that correct?
2 You can look at that exhibit.

3 Actually the date of the order is 2002 on 37 -- on
4 Defense Exhibit 37, right?

10:47AM

5 A. I have the date of offense for the aggravated assault was
6 11/26/01. That's what it says on the order.

7 Q. And the order is January 10th of 2002 and that was four
8 years before -- that's just to the left -- to the left of
9 11/26/01. That conviction was from early 2000s, isn't that

10:47AM

10 correct?

11 A. That's correct.

12 Q. 2002, four years before this happened, correct?

13 A. Correct.

14 Q. Okay. And if you looked at his immigration history, you
15 would have found that he hadn't been deported, he kept his LPR
16 status, correct?

10:47AM

17 A. Correct. He hadn't been deported in 2001.

18 Q. Didn't you find that strange?

19 A. No, not strange at all.

10:47AM

20 Q. Did it make you want to -- something like that would want
21 to make you look further into his immigration history though,
22 right? It's a four-year conviction and he still hasn't been in
23 any proceedings. Something --

24 A. Yes, but a criminal conviction is not necessarily going
25 to -- that won't necessarily trigger an immigration proceeding.

10:48AM

1 Q. That's right.

2 A. They are two entirely different systems.

3 Q. That's right. Exactly.

4 Now, the warrant for his arrest as an alien didn't happen
10:48AM 5 until the next day, November 22nd; is that correct?

6 A. That's correct.

7 Q. How long does it take to get a warrant for an arrest of an
8 alien?

9 A. The warrant for arrest is generated when you're processing
10:48AM 10 the detainee.

11 Q. It's not something that you can get before you arrest him?

12 A. It's not normally obtained before.

13 Q. Okay. How about just an arrest warrant for a charge like
14 murder?

10:49AM 15 A. What's the question?

16 Q. The question is it doesn't take long to generate an arrest
17 warrant for murder, does it?

18 A. Not necessarily. I mean --

19 Q. You would need to have probable cause --

10:49AM 20 A. -- a day.

21 Q. -- and present a probable cause affidavit to a judge who
22 then can sign that warrant, correct?

23 A. Correct.

24 Q. Right. You did that for a search warrant before his
10:49AM 25 arrest, but you did not try to attempt to get an arrest warrant

1 for Mr. Duran-Gomez because you didn't have enough probable
2 cause for murder at that point, did you?

3 A. I believe that I haven't had enough probable cause.

4 Q. But you didn't present it to a judge and try to get an
10:49AM 5 arrest warrant, did you?

6 A. That's correct. I did not. And I also didn't get the
7 search warrant either.

8 Q. Right. I understand that.

9 A. Okay.

10:49AM 10 Q. But a search warrant was gotten, right?

11 A. Correct.

12 MR. DAVIS: May I have just a moment, Your Honor?

13 INTERPRETER DEL VILLAR: While we wait, the interpreter
14 speaks.

10:50AM 15 If I could just make sure that Mr. Neal is
16 speaking into the microphone. He's straying a little bit, and
17 it's making it a little hard to hear with some of the noise in
18 the background.

19 THE COURT: I agree. Thank you.

10:50AM 20 MR. DAVIS: Judge, I pass the witness.

21 THE COURT: I have a couple of matters before you leave
22 just in case.

23 MR. DAVIS: Yes.

24 THE COURT: There seems to be an indication that there
10:50AM 25 was a warehouse that was searched that was not the warehouse

1 that the parties were intending or thinking they were
2 searching. Am I correct on that?

3 THE WITNESS: There was another warehouse on Ashcroft
4 that was related to Mr. Duran that we discovered through, if I
10:50AM 5 remember correctly, it was like a commercial database, but that
6 was not the warehouse that the search warrant was --

7 THE COURT: Issued for.

8 THE WITNESS: -- issued for because we had --
9 additional information came out where a witness came out and
10:50AM 10 said, "This is the specific address."

11 THE COURT: But that's the warehouse that you had some
12 surveillance on, I gather is what you're saying, before someone
13 gave you a different address.

14 THE WITNESS: Yes, sir. We spent an extensive amount
10:51AM 15 of time just in the general area hoping that we would see
16 something coming or going where we could identify it ourselves.

17 THE COURT: Now, the reason I ask that is because one
18 of the documents that the government has proffered for exhibit,
19 it's called Exhibit B, and it's a search warrant issued by a
10:51AM 20 Harris County judge. Was that the search warrant as far as you
21 know that was issued for the warehouse that did get searched on
22 November 21st?

23 THE WITNESS: I would have to look at it, Your Honor.
24 I don't remember if it was in Harris County or Fort Bend
10:51AM 25 County.

1 THE COURT: All right. Let me just -- I'm sorry.

2 THE WITNESS: No, sir. You're fine.

3 (Reviewing document.) Yes, sir. That's correct.

4 This is the search warrant, and it was in Harris County.

10:52AM 5 THE COURT: Thank you.

6 THE WITNESS: Yes, sir.

7 THE COURT: And this is the warehouse that -- this is

8 the other warehouse, the one that was later determined as

9 opposed to the one that was simply associated with the

10:52AM 10 defendant, right?

11 THE WITNESS: Yes, sir, that's correct.

12 THE COURT: Okay. I got it. Thank you.

13 All right. Ms. Collins, any redirect?

14 MS. COLLINS: No, Your Honor.

10:52AM 15 THE COURT: You may step down, sir.

16 I tell you what. Let's take about a ten-minute

17 break. I'm sure the interpreters might appreciate that, and

18 we'll take about a ten-minute break. It's about ten until

19 11:00. Let's make that to 11:05 and then we'll pick up with

10:52AM 20 the next witness, okay?

21 MS. COLLINS: Your Honor, just for your knowledge --

22 THE COURT: Make sure you're speaking into the --

23 MS. COLLINS: Absolutely.

24 THE COURT: Thank you.

10:52AM 25 MS. COLLINS: We rest at this point. We will not be

1 calling the second witness.

2 THE COURT: Yes. And I understand that, but you
3 understand the risk and that is that Mr. Neal can call him?

4 MS. COLLINS: Absolutely, Your Honor.

10:53AM 5 THE COURT: You don't care about that.

6 MS. COLLINS: I do not.

7 THE COURT: Let's do this. Let's go ahead -- and you
8 step down, sir. Thank you very much.

9 Mr. Neal, let me know whether or not you want to
10:53AM 10 call that witness so I'll know whether or not there will be any
11 more testimonial evidence in this case.

12 MR. DAVIS: I will, Your Honor. Can I discuss it with
13 counsel?

14 THE COURT: Yes, you have 15 minutes.

15 INTERPRETER DEL VILLAR: The interpreter cannot hear
16 Mr. Neal.

17 THE COURT: I'm sorry. Mr. Neal, you're not -- thank
18 you.

19 MR. DAVIS: I'm sorry.

10:53AM 20 Yes, Judge. May I be able to discuss it with
21 co-counsel?

22 THE COURT: You may and you will have 15 minutes and
23 we'll take a break at this point. Thank you very much.

24 Don't speak into the microphones after I leave,
10:53AM 25 please.

1 THE COURTROOM MANAGER: All rise.

2 (Court is in recess.)

3 THE COURTROOM MANAGER: All rise.

4 THE COURT: All right. Please be seated.

11:09AM 5 Let's see if we've got the interpreter and all
6 back in place and online already. Yes.

7 MR. WYDA: We're here, Your Honor.

8 THE COURT: Very good.

9 INTERPRETER DEL VILLAR: The interpreter is
11:09AM 10 interpreting, Your Honor.

11 THE COURT: Yes. Thank you.

12 Mr. Neal.

13 MR. DAVIS: Yes, Your Honor. So we are not going to
14 call Agent Lamb.

11:09AM 15 THE COURT: Okay.

16 MR. DAVIS: And we wanted to clear up with the Court
17 exhibits that -- we gave you a lot of exhibits, Judge; and we
18 wanted to narrow it down for the Court to --

19 THE COURT: I'm going to ask that. I'm going to do
11:09AM 20 that with the government as well as you if we're ready now to
21 go into what the Court should consider.

22 So I don't know if -- you did not give me an
23 exhibit list.

24 MR. DAVIS: I thought I included it right at the very
11:10AM 25 beginning, Judge.

1 THE COURT: Let me just take a quick look then and
2 maybe I overlooked it. Oh, yes, there is something in here. I
3 guess that is the exhibit list. I apologize.

4 MR. DAVIS: No. That's okay, Judge. I wish I had put
11:10AM 5 it together a little better.

6 THE COURT: Okay. Tell me what you're offering. I
7 believe you show Exhibits 1 through 54.

8 MR. DAVIS: That's correct, Your Honor.

9 THE COURT: All right. So which of these are you
11:10AM 10 offering?

11 MR. DAVIS: Exhibits 13.

12 THE COURT: Hold on just one second. Let me keep up
13 with you.

14 MR. DAVIS: 14.

11:10AM 15 THE COURT: All right. Hold on just one second. I
16 think I marked the wrong line there. Okay.

17 MR. DAVIS: Judge, you may want to go back to that
18 first page because Exhibit 12 as well. Sorry.

19 THE COURT: All right. Okay.

11:10AM 20 MR. DAVIS: Exhibit 13, 14, Exhibit 15.

21 THE COURT: Yes.

22 MR. DAVIS: 16.

23 THE COURT: Got it.

24 MR. DAVIS: Exhibit 20.

11:11AM 25 THE COURT: Okay.

1 MR. DAVIS: 22.

2 THE COURT: All right.

3 MR. DAVIS: 29.

4 THE COURT: Okay.

11:11AM 5 MR. DAVIS: 30.

6 THE COURT: Yes.

7 MR. DAVIS: 36.

8 THE COURT: Just one second. Let me turn the Page.

9 36 you say?

11:11AM 10 MR. DAVIS: Yes, Your Honor.

11 THE COURT: All right.

12 MR. DAVIS: 37.

13 THE COURT: All right.

14 MR. DAVIS: 38.

11:11AM 15 THE COURT: Uh-huh.

16 MR. DAVIS: 39.

17 THE COURT: Yes.

18 MR. DAVIS: 41, 43.

19 THE COURT: All right.

11:11AM 20 MR. DAVIS: I hate to do this to you, Judge. I have to
21 backtrack to also Exhibit 23.

22 THE COURT: Okay.

23 MR. DAVIS: And that's it, Your Honor.

24 THE COURT: 23. And you stopped at -- the last call

11:11AM 25 was Exhibit 43?

1 MR. DAVIS: 43. Yes, Your Honor.

2 THE COURT: All right. Let me ask Ms. Collins or the
3 one who may be responding whether or not there are objections
4 to these exhibits as you heard them.

11:12AM 5 MS. COLLINS: No, Your Honor.

6 THE COURT: Okay. All right. Then they're admitted
7 for purposes of this proceeding.

8 As well we have the Government's Exhibits A, B
9 and C. Are you offering those three, Ms. Collins?

11:12AM 10 MS. COLLINS: Yes, Your Honor.

11 THE COURT: All right. Any objections as it relates to
12 any of those, Mr. Neal? You need to speak into the microphone.

13 MR. DAVIS: No, Your Honor.

14 THE COURT: Okay. So they're admitted for these
11:12AM 15 proceedings.

16 All right. Let me see what else do I have here
17 if anything?

18 All right. Did the government have any other
19 evidence that it wants to offer or intends to offer in this
11:12AM 20 matter?

21 MS. COLLINS: No, Your Honor.

22 MR. DAVIS: No, Your Honor.

23 THE COURT: And the defense closes as well?

24 MR. DAVIS: Yes, Your Honor.

11:13AM 25 MS. STELZIG: Your Honor, this is Ms. Stelzig.

1 We had intended to present argument today, but
2 perhaps because of the Court's schedule, it might be more
3 useful to the Court if we offered supplemental briefing because
4 we do think it would be helpful to incorporate some of the
5 testimony that we heard today into our argument and we would be
6 happy to provide that to the Court within two weeks of this
7 proceeding if that time frame is amenable to the Court.

8 THE COURT: Well, it depends on when this could be
9 ready if you're relying upon the testimony in terms of
10 supplementing. We certainly don't need any supplementation as
11 it relates to the motion and the response and the reply; but if
12 there is something that you need to bring to the Court's
13 attention, my comment next was going to be that I'll give you
14 five pages to tell me what it is in the record that supplements
15 or supports your motion, not as opposed to simply rewriting the
16 motion itself.

17 And of course I don't know that two weeks is not
18 too long. I've got trials and things stacking up. I have to
19 do things when my hands are on them; otherwise, I'll have a lot
20 of promises made and not fulfilled.

21 So what I'm going to ask, if I can ask the court
22 reporter, is whether or not this transcript can be ready in
23 rough fashion or rough form at any time soon?

24 THE COURT REPORTER: Yes.

25 THE COURT: Of course you're going to say "yes," but

1 when is soon? I remember there was a book I used to read
2 called *Sooner*.

3 THE COURT REPORTER: I can give it to you rough today.

4 THE COURT: If the government insists on that or if
11:15AM 5 defense insists on that, then they may end up dealing with this
6 matter without the benefit of it. But if they are willing to
7 receive for purposes of supplementation a rough draft and that
8 record would reflect that, then I'm looking at receiving
9 responses by next week end. That would be Friday.

11:15AM 10 THE COURTROOM MANAGER: April 1st.

11 THE COURT: April Fools' Day, is that what that is?

12 THE COURTROOM MANAGER: Yes, Your Honor.

13 THE COURT: I would be looking at receiving that by
14 April 1st and I think probably for the benefit of the record
11:15AM 15 since that is a Friday, we could probably say that following
16 Monday, which would be April what?

17 THE COURTROOM MANAGER: Four.

18 THE COURT: April 4. I would receive your documents
19 and supplementation on April 4. All right?

11:16AM 20 MS. STELZIG: Thank you, Your Honor.

21 THE COURT: Okay. April 4th, receive supplementations.

22 Is there anything else that I need to hear
23 regarding this proceeding?

24 MS. COLLINS: No, Your Honor.

11:16AM 25 THE COURT: Okay.

1 MS. STELZIG: Your Honor, not with respect to this
2 proceeding. I believe that we had originally had a status
3 conference that was scheduled for the 24th that was then later
4 consolidated into this proceeding to deal with other matters.
11:16AM 5 So we do have a few other matters, but not with respect to the
6 motion.

7 THE COURT: So the other matters that you are referring
8 to, are those matters that have been presented to me by
9 motion --

11:16AM 10 MS. STELZIG: Yes, Your Honor.

11 THE COURT: -- by the defense at this point; or are
12 they matters that are not before the Court directly?

13 MS. STELZIG: Your Honor, most of them are matters that
14 are before the Court at least partially and one was, I believe
11:16AM 15 we had said in the status conference to discuss the status of
16 the defense's de-authorization submission.

17 THE COURT: And that was to be done by both the
18 government and the defense?

19 MS. STELZIG: Your Honor, we had requested that there
11:17AM 20 be a hearing so that we could provide a date that the
21 government could provide an update to the Court and to the
22 defense about the status of that.

23 THE COURT: Okay.

24 MS. STELZIG: So we would just ask for --

11:17AM 25 THE COURT: Well, let's see what they have to say about

1 it then.

2 MS. STELZIG: Thank you.

3 THE COURT: We're talking about the question -- I think
4 this is a request.

11:17AM

5 For the benefit of the record, why don't you,
6 Ms. Stelzig, kind of give us a 50-word or less kind of basket
7 to put this in. What is this about for the record?

8 MS. STELZIG: Thank you, Your Honor.

11:17AM

9 I'm sorry. You mean with respect to the
10 de-authorization request?

11 THE COURT: Yes. Uh-huh.

12 MS. STELZIG: Thank you, Your Honor.

11:17AM

13 So just for some context, Mr. Duran-Gomez, we
14 submitted a draft of our de-authorization request. That's a
15 de-authorization to have the death penalty removed from the
16 case.

11:18AM

17 We submitted a draft in November for the
18 government's review, which was then amended on December 14th
19 and asked that it be submitted at that time to the Department
20 of Justice. We understand that there's an internal process
21 that has to take place first in the U.S. Attorney's Office.

11:18AM

22 We then sent an updated version on January 18th
23 that incorporated this Court's ruling regarding the motion to
24 strike the death notice and we asked at that time that our
25 de-authorization request be submitted promptly.

1 So we were just hoping for an update from the
2 government on what the status of that de-authorization request
3 was because obviously it informs the next steps in the
4 proceeding.

11:18AM

5 THE COURT: All right. Who will speak to that,
6 Ms. Collins?

7 MS. COLLINS: I can, Your Honor.

8 THE COURT: Go ahead.

11:18AM

9 MS. COLLINS: To put it simply, it is under review by
10 our U.S. Attorney.

11 THE COURT: All right. And when you say, "by the
12 U.S. Attorney," are you talking about the local U.S. Attorney?

13 MS. COLLINS: Yes. Here in the Southern District.

11:18AM

14 THE COURT: All right. So that begins the process, I
15 gather, as far as the Department of Justice is concerned. Some
16 review is done by the U.S. Attorney local and that
17 recommendation or whatever position might be taken is forwarded
18 to Washington -- I'll say Washington -- the Department of
19 Justice and that process then is reviewed or that
20 recommendation or lack of recommendation is reviewed.

11:19AM

21 MS. COLLINS: Yes, Your Honor.

22 THE COURT: All right. What are we talking about in
23 terms of a -- I don't know that you have any history or
24 experience with this, but what are we talking about in terms of
25 a time frame for this generally for this process? Do you know?

11:19AM

1 MS. COLLINS: Your Honor, I don't know that there is a
2 general time frame for the process, although as you stated, I
3 haven't done this fairly often. However, I don't know that
4 there's a date or a time that I could give at this point.

11:19AM

5 THE COURT: All right. Now, we've had a changing of
6 the guard and the acting U.S. Attorney, is that the person who
7 would be responsible for getting this done?

11:20AM

8 MS. COLLINS: Yes, Your Honor. And I think enough time
9 has passed that she's now considered the U.S. Attorney for the
10 Southern District. But, yes, she would start the process and
11 is able to make a decision, whatever that decision is.

12 THE COURT: Well, has she been nominated and gone
13 before Congress?

11:20AM

14 MS. COLLINS: No, Your Honor. As I understand it, it's
15 a time frame situation. So after a period of time, she
16 becomes, I guess by default, the U.S. Attorney until --

11:20AM

17 THE COURT: I know that we have -- judges have a
18 process in place that we step into the breach and try to make
19 sure that that office has representative leadership and I think
20 that's where we're talking about, that period of time has
21 passed.

22 MS. COLLINS: Yes, Your Honor.

23 THE COURT: And no one has said no and Washington has
24 not said no so that's where we are.

11:20AM

25 MS. COLLINS: Yes, Your Honor.

1 THE COURT: Okay. All right. You have it.

2 The motions that were filed and prepared and the
3 responses filed, the Court will in all likelihood be issuing
4 those orders on those today or by Thursday at the latest. I
11:21AM 5 believe there are three or four different motions and I don't
6 feel that I need to go through them.

7 But let me ask whether or not there's anything
8 that's gotten old on me that I missed and just forgot to pick
9 it up.

11:21AM 10 Do you know, Ms. Stelzig?

11 MS. STELZIG: Thank you, Your Honor. There are two
12 motions that are fully briefed and are ready for the Court to
13 rule.

14 That is our ECF 689, motion for disclosure of
11:21AM 15 jailhouse informants.

16 THE COURT: ECF, what's that number?

17 MS. STELZIG: 689, Your Honor.

18 THE COURT: 689. Okay.

19 MS. STELZIG: And also ECF No. 676, the motion to
11:21AM 20 exclude inconsistent positions. And the Court had indicated
21 that we should hold off on a reply for that so that is also
22 considered as fully briefed.

23 Your Honor, we filed seven discovery motions.
24 The government has filed responses to three of them. We would
11:22AM 25 like an opportunity to reply to those, Your Honor, because in

1 at least two of them the government has conceded that discovery
2 that has been requested is no longer available so we would like
3 to provide an opportunity in our reply to seek particular
4 remedies.

11:22AM

5 THE COURT: Well, let's consider that a separate motion
6 as opposed to whether or not I should be entering an order on
7 it.

8 MS. STELZIG: Very well, Your Honor.

11:22AM

9 And then the other four, Your Honor, which are
10 ECF 738, 740, 741 and 744, I have not seen a response from the
11 government so I don't know if one is forthcoming.

12 THE COURT: These are discovery motions as well?

13 MS. STELZIG: Yes. Those are all motions to compel
14 discovery.

11:22AM

15 THE COURT: Okay. Motion to compel discovery or
16 whatever. Okay.

17 I'm not sure what those -- how those are titled,
18 Ms. Collins, but are you able to take a look and briefly tell
19 us what your time frame is for those? What are those three, I
20 believe?

11:23AM

21 MS. COLLINS: Yes, Your Honor. If you will give me
22 just one moment.

23 THE COURT: Take your time.

24 INTERPRETER DEL VILLAR: The interpreter speaks.

11:23AM

25 In the meantime, I have dropped off of the call.

1 I don't know if, Sarita, if you can hear me if you would like
2 to take a moment --

3 THE COURT: I can hear you, but can you hear me?

4 INTERPRETER DEL VILLAR: I can hear you, Your Honor;
11:23AM 5 but I dropped off of the telephone call with the other
6 interpreter where we are team interpreting. If I can, I would
7 like to take a moment to have her call me back and add me back
8 on --

9 THE COURT: All right. Do that, please.

11:23AM 10 INTERPRETER GOMEZ-MOLA: I have heard that. This is
11 Sarita intervening, and I will try to do that. Thank you.

12 INTERPRETER DEL VILLAR: Thank you, Sarita. I
13 appreciate it.

14 THE COURT: While they're doing that, let me do a
11:23AM 15 housekeeping matter for my benefit and for the benefit of the
16 record.

17 Would the defendant, Mr. Duran-Gomez, raise his
18 right hand and wave that he is in the proceedings if, in fact,
19 he is; and I do see that.

11:24AM 20 And you are, in fact, Rene Duran-Gomez, sir?

21 (No response.)

22 THE COURT: I'm sorry.

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Very good. Thank you.

11:24AM 25 Do you have any complaints or concerns about any

1 of the proceedings that you were unable to hear or see in this
2 process?

3 THE DEFENDANT: No.

4 THE COURT: All right. Yes.

11:24AM 5 MR. WYDA: Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 MS. COLLINS: Yes, Your Honor. For the four mentioned
8 by defense counsel where we did not respond in writing, that
9 was due to the fact we believe we've complied and there's
10 simply nothing else to be able to turn over; however, we can
11 put that in writing by the end of the week if the Court would
12 like.

13 THE COURT: All right. Let me just tell you how I have
14 to operate in these proceedings, particularly in criminal
11:25AM 15 proceedings; and I don't know that I operate differently in
16 civil proceedings.

17 Even when opposing counsel says, "We have given
18 you everything that we got our hands on or we can think of or
19 that we know about," I'm going to enter an order directing you
11:25AM 20 to do that.

21 Why? Because I can't have you to come up or
22 someone come up a year or two later and say, "Oh, if you had
23 told me, Judge, I would have supplemented my findings. So the
24 duty is a continuing obligation on the part of the party who is
11:25AM 25 to produce to produce and that means promptly produce, not at

1 the time of trial or at some point after the matters have
2 gotten cold in everyone's minds.

3 So if you see an order that goes out, it probably
4 will say, for example, I granted the defendant's request for
5 discovery. If you've already complied, then it's of no
6 consequence.

7 However, there's a tagline that says that if you
8 are of the opinion that anything that's been requested is
9 classified or is privileged in some way, you have a duty to put
10 that in the Court's hands.

11 I don't think I want to dance around with, well,
12 we would have filed a motion to -- for the Court to take this
13 under advisement or review it *in camera*, but we thought that it
14 was not needed. Anything that touches this case that is part
15 of the evidence, if it is relevant or not in the minds of the
16 responding attorney, it should either be given to the Court
17 *in camera* so the Court can determine relevancy or not. That's
18 basically the way I see these motions because I have no way --

19 INTERPRETER DEL VILLAR: Your Honor --

20 THE COURT: -- I have no way of determining with the
21 volume of documents whether or not something is complete or
22 not.

23 I'm sorry. I think I heard from the interpreter.

24 INTERPRETER DEL VILLAR: Yes, Your Honor. I'm sorry.

25 I'm so sorry to interrupt, but it's just that we have not had

1 the chance yet to add me to the call so Sarita needs to do
2 that. If we may just have a moment of silence for just a few
3 moments.

4 THE COURT: Will do. We'll hang on.

11:27AM

5 INTERPRETER GOMEZ-MOLA: Your Honor, I can communicate
6 to Ramon through the Court that I am trying, doing my best
7 interpreting and also trying to do this and I just cannot find
8 a way of merging the call after I have --

11:27AM

9 INTERPRETER DEL VILLAR: Okay. Let's do this. Can we
10 have the defendant maybe hang up and maybe call me and I'll do
11 the transition?

11:28AM

12 THE COURT: I think we're done with the proceeding
13 essentially and I don't know that we need to start this process
14 up again. What are we losing when we don't have that phone
15 connection?

11:28AM

16 INTERPRETER DEL VILLAR: We've been in team
17 interpreting mode and so we need to switch now and that's the
18 thing. I mean, if Your Honor is going to only continue maybe
19 another two or three minutes, then that won't be necessary; but
20 if we're going to continue much longer --

21 THE COURT: I think that's where we are at this point.
22 I think that's where we are at this point. Let me just make
23 sure.

24 Ms. Collins.

11:28AM

25 MS. COLLINS: To respond, Your Honor, I believe we've

1 done just that. In those motions where we believe something is
2 privileged or classified, we have responded in those
3 situations.

4 THE COURT: Very good. Thank you.

11:28AM 5 Anything else from the defense?

6 MS. STELZIG: Just very briefly, Your Honor.

7 With respect to the government's response -- and
8 I appreciate that this case has been going on a long time.
9 These are not the original prosecutors, and I think everyone on
10 the government's side has been trying hard. Unfortunately
11 we're still missing a lot of substantial discovery; and I just
12 want to make sure that in the government's response, they're
13 addressing our particular concerns.

14 For example, like in ECF 740, we document
11:29AM 15 extensively in that motion and its exhibits the number of phone
16 records that we know the government subpoenaed for individuals
17 and we don't have the records.

18 So maybe the government explains, well, the phone
19 companies didn't have them or we had them but we can't find
11:29AM 20 them, but we feel like we need to have that explanation on the
21 record so we can stop trying to chase down these records and
22 get a final answer one way or the other.

23 THE COURT: Correct.

24 MS. STELZIG: So I just want to make sure that's --

11:29AM 25 THE COURT: And my response is if the government has

1 not filed a response or if the government's response is one way
2 or the other, then I will enter an order directing them to do
3 what has to be done to satisfy the motion, whether it's by
4 producing the evidence or making a disclaimer of some sort that
11:29AM 5 it's unavailable.

6 The government can certainly do that without me
7 having an order; but even if the government does respond, "We
8 don't know where the records are. We can't find them," I'm
9 still going to enter that same order because they may be found
11:29AM 10 six months from now. We just don't know and it's a continuing
11 obligation.

12 That's to avoid having to redo these motions and
13 arguments over and over again.

14 MS. STELZIG: Thank you, Your Honor.

11:30AM 15 THE COURT: All right. All right. That's Ms. Stelzig.

16 Anything else from you, Mr. Neal?

17 MR. DAVIS: No, Your Honor.

18 THE COURT: Mr. Odom, you've been very quiet. Are you
19 present?

11:30AM 20 MR. ODOM: Yes, sir, I am. I'm here and observing,
21 Judge.

22 THE COURT: Thank you. Thank you very much.

23 And, Mr. Disney, you're present as well, are you
24 not?

11:30AM 25 MR. DISNEY: I am, Your Honor. Thank you.

1 THE COURT: All right. I don't believe we heard
2 anything from Ms. Stotts yet, have we?

3 MS. STOTTS: No, Judge; but I'm here and present.

11:30AM

4 THE COURT: I'm making sure the record is clear on all
5 of this so that even the parties who are not present are able
6 to understand the makeup of the courtroom this morning.

11:31AM

7 I'm done here. Thank you very much. I expect to
8 see your papers on or before April 4 and I'm going to pass back
9 to the defense everything that was not admitted in evidence. I
10 don't want these other documents. They'll end up getting
11 destroyed because we have no place to keep them. So Cynthia
12 will make that available to you.

13 I believe the government's exhibits are
14 straightforward three exhibits, and we're done with that.

11:31AM

15 All right. Thank you very much.

16 THE LAW CLERK: All rise.

17 (The proceedings were adjourned.)

18 * * * *

19 REPORTER'S CERTIFICATE

20 I, Lanie M. Smith, CSR, RMR, CRR, Official
21 Court Reporter, United States District Court, Southern District
22 of Texas, do hereby certify that the foregoing is a true and
23 correct transcript, to the best of my ability and
24 understanding, from the record of the proceedings in the
25 above-entitled and numbered matter.

/s/ Lanie M. Smith
Official Court Reporter